United States Court of Appeals

for the Second Circuit

TRANSCRIPT

75-7061

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

TRANSCRIPT

(Volume I of IX - Pages 1-454)

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Attorneys for Plaintiffs Appellants and Intervening Plaintiffs-Appellants
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Plaintiffs	Identification	In Evidence
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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TRINITY EPISCOPAL SCHOOL CORP., and TRINITY HOUSING CO., INC.,

Plaintiffs,

-and-

ROLAND N. KARLAN, ALVIN C. HUDGINS and CONTINUE,

Plaintiff-Intervenors,

-against-

GEORGE ROMNEY, Secretary of Department of Housing and Urban Renewal, et al.,

Defendants.

71 Civ. 4315

----------x

BEFORE:

IRVING BEN COOPER,

District Judge

New York, New York
September 19, 1973 - 10:00 a.m.

APPEARANCES:

DEMOV, MORRIS, [illegible] & SHEIN, ESQS.,
Attorneys for Plaintiffs and
Plaintiff-Intervenors
BY: EUGENE J. MORRIS, ESQ.,
JOEL J. SPECTOR, ESQ.,
BARBARA P. SUGARMAN, ESQ.,
MARTIN STUART BAKER, ESQ.,
Of Counsel.

APPEARANCES (Continued):

PAUL J. CURRAN, ESO.,
United States Attorney for the
Southern District of New York
Attorney for the Government
BY: DAVID P. LAND, ESO.,
Assistant U. S. Attorney

NORMAN REDLICH, ESO.,
Corporation Counsel for the City of New York
Attorney for various defendants,
BY HADLEY W. GOLD, ESO.,
Assistant Corporation Counsel.

MARTTIE L. THOMPSON, ESO.,
Attorney for Defendant Strycker's Bay Neighborhood
Council
BY: JOHN de P. DOUW, ESO.,
Of Counsel.

and

LERNER, WALKER, LEVY & COHEN, ESOS.,
BY: ROBERT E. LEVEY, ESO.,
Of Counsel.

- - -

THE COURT: Gentlemen, I think a few words might be appropriate at this point.

As you well know, the matter we are about to undertake was called to my attention for the first time yesterday afternoon by Judge Weinfeld, I should say it was around 3:30. I think we can all take judicial notice of the constant burden, inordinate burden under which Judge Weinfeld constantly labors.

Those of us who are his colleagues and have the

privilege of being his friend are constantly worried about his disregard of his personal health and the limits of his own strength and yet nothing can be done about it. With him it is the ministry of the law.

And so I didn't hesitate for a moment when he told me that this matter, Trinity, et cetera, had suddenly come before him, that he was distressed over his inability to meet the challenge because of his heavy burdens and would it be possible for me to somehow rearrange my own schedule, and I thought that was the least I could do.

Counsel have been most helpful in submitting memoranda which my reliable law clerk and I were able to study and get enlightenment. I would say our conference last night ended after midnight. We want to meet your l[illegible]s. Yours is the heavy ore.

I had suggested to Judge Weinfeld that we start at 9:00 o'clock this morning, but he felt that 10:00 would be better in the light of the suddenness of the direction that we begin.

I was able to be available only because I was able in succeeding to dispose of another matter that would have tied me up today, tomorrow and Friday. And so bearing in mind that I have commitments, too, that there are defendants languising in jail and that my concern for

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them is as deep and abiding as my concern with justice in your case, I am going to try and maneuver as best I know how to accommodate you and still not do an injustice to others who are counting on my presence.

Today we can sit up until 5:00 o'clock and tomorrow I would suggest we start at 9:00 o'clock. I will consult counsel. They, too, have commitments other than this case, I suppose.

We will try to accommodate you.

Tomorrow, then, if we get together, it will be around 9:00, later if you insist, and sit a full day.

Friday I have commitments beyond 1:00 o'clock. We will start at 9:00 o'clock on Friday and I don't think I can go beyond 1:00 o'clock that day.

So that we already have a bird's eye view of what your respective contentions are. That is not to throttle or cut you off in any way from making an opening statement or from protecting the record as you deem advisable for the full protection of your clients.

I should also mention that I have been a resident on the West Side and in the same house for the last 43 years, 33 Riverside Drive at 75th and Riverside Drive. I have no monetary interest of any kind, never did have, in any real estate or any operation of any kind, directly

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or indirectly, in that entire neighborhood, but I thought I should mention it so that if you feel that that might disqualify the Judge from sitting -- I can't see how, but certainly if it occurs to you, I don't want you to be timid about spreading on the record what you think you owe your client.

I might also add that my family and friends are not in the immediate neighborhood and never have been and that I have never belonged to any association or other organization of any kind in that entire area throughout those four decades.

It has been a matter of living there and going from there to the court and to other public offices that I have held. I have, by the way, been a judge for 35 years, and, if I may add, active. That didn't permit much time for anything else.

Gentlemen, that's all that comes to my mind right now. If you wish any opening statement, make it, and if you wish to say anything to me before we start with the proceeding, I want to afford you that opportunity.

MR. MORRIS: My name is Eugene J. Morris. I am the attorney for the petitioner here, Trinity School, the plaintiffs in the action.

I am also the attorney for the proposed intevenors.

There is a motion for intervention before your Honor.

THE COURT: Yes.

MR. MORRIS: And I am their attorney as well.

I have one preliminary statement which I think needs to be made right at the outset, a personal problem that I have, which I have solved but I wish to inform the Court of what was done in connection with that since that was fully discussed before Judge Weinfeld and Judge Weinfeld was aware of what I am about to say.

I am prepared to proceed with the trial of this case today and to spend all day on the trial.

Tomorrow and Friday I am chairman of a seminar on housing before the Practicing Law Institute and that was scheduled many months ago and I have been preparing for this for a long time and there is no way that I can get out of that obligation.

However, there are two aspects of it --

THE COURT: Oh, there is a way, let me interrupt you, if the Court directs you.

If this has seized me to the extent that it has, I won't allow anything but it will help to prevent me from being here, so I don't want you to think that I am unmindful of what it means to you, but you said you must

keep it and nothing can prevent you and I am saying, oh, yes, I can prevent you.

MR. MORRIS: May I give you the circumstances that we have worked out, your Honor, and you may find those satisfactory.

I have arranged for one of my partners, a trial attorney, to take such parts of the testimony as may be required when my presence is required at the PLI seminar and he will sit through the entire trial today and will be prepared to fill in where ever I am not available.

THE COURT: So there will be a continuing --

MR. MORRIS: So there will be a continuance. I am not asking the Court for an adjournment.

THE COURT: By all means. You call the shots on that as long as we can go forward here.

MR. MORRIS: Yes, we can go forward and there will be no delay because of that, but I ask the indulgence of the Court to allow me to appear at the seminar and have my partner conduct the trial during those times of my enforced absence.

THE COURT: Application granted in full.

You mention the beneficiaries of your labors and I participated in your being able to be there.

MR. MORRIS: Thank you very much.

THE COURT: And I can count on their votes in the future.

MR. MORRIS: Yes.

There are several technical aspects of the situation as it is before us on this hearing that I would like to allude to before I go into my opening statement.

One is that this is a hearing, an evidentiary hearing in connection with a motion for a temporary injunction and it is not the full blown trial of the issue, which is to ensue at some later date before either your Honor or before Judge Weinfeld depending on the pleasure of the Court with respect to that, so that there are many phases and many aspects of what is involved in this situation that will not be adduced by us as part of our affirmative presentation.

THE COURT: In connection with the application for a preliminary injunction?

MR. MORRIS: Yes.

THE COURT: You are confining it to that?

MR. MORRIS: Yes, I am confining it to that. That's it precisely.

The other fact that I want to bring to the Court's attention is there are two other motions involved which will be before your Honor. One is a motion for intervention

on the part of two individual owners and on the part of a group of owners called Continue, and I am their attorney and part of my application here will be for the relief requested in those papers.

A third element involves a new motion which we are about --

THE COURT: Let me interrupt you so I can follow you and understand it.

In the last analysis, the Judge must look to counsel for guidance, until they prove themselves unworthy of it.

The intevenors are not asking for relief that differs from the relief pleaded for by Trinity?

MR. MORRIS: That is correct.

There is a third motion, which will be served this morning, subject to your Honor's instruction. We did not serve it yesterday because Judge Weinfeld said take everything before the new Court and do not do anything there, so we didn't do anything.

One of the issues in the case is the question of the necessity for an environmental impact statement. It is the contention of the Government that because of the manner in which the pleading was framed two years ago, the environmental impact, the NEPA statute, the envirnomental

impact statute was not properly pleaded in our complaint. That is one of their positions.

We argue that it was pleaded in that we pleaded the HUD regulations, the Housing and Urban Development regulations, and that included the requirements for an environmental impact statement and that, therefore, our existing pleading is adequate.

However, in order to preclude any technical problem and to relieve the Court of the burden of determining that question, we are making a new motion for leave to amend the pleading to include the environmental impact statute upon which we predicate a large measure of our claim.

Those motion papers are in court now and we have made the motion returnable next week, on the 25th, subject to whatever instruction the Court gives with respect to them, and that is the third application which is made before the Court.

We can serve those papers now if your Honor --

THE COURT: Let me first hear from the other side and then we will decide what to do.

MR. MORRIS: Yes.

In addition to that, we received the answering papers in this case on Friday of last week. They had been promised for earlier but were not given to us and we

didn't get them until Friday. We spent the weekend and did a tremendous amount of work in getting out reply papers, but we were unable to complete all of the reply papers in view of the complexity of the matter, but we have completed some of them, and I would appreciate your Honor's permission to serve upon my adversaries and to submit to the Court the papers which we did complete and hand those in now with the reservation that I be permitted to submit additional reply papers subject to the Court's discretion and the Court's direction.

THE COURT: Are you through right now, Mr. Morris?

MR. MORRIS: Yes.

THE COURT: Very well.

MR. LAND: Your Honor, I am David Land from the United States Attorney's office.

THE COURT: Yes. At last we meet, Mr. Land. We have had correspondence and you write very well, as I recall.

MR. LAND: Thank you very much, your Honor.

I represent one set of the defendants in this action, being certain officials of the Department of Housing and Urban Development. The other defendants in this action are the City of New York, who is represented by Mr. Hadley Gold, and also the Strycker's Bay Neighborhood

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Council, represented by Mr. Douw. Strycker's Bay intervened about a year ago --

THE COURT: Through an order of Judge MacMahon.

MR. LAND: Yes.

Strycker's Bay is an association of people residing in the West Side area and they have authority under local law to represent these people in connection with the Urban Renewal Project.

This action was commenced in 1971. It was commenced before HUD took any affirmative action in respect to any of the housing sites which are now currently in dispute.

The particular housing site with respect to which HUD has taken some affirmative action is known as Site 30 of the West Side Urban Renewal Area. That particular site is across the street from the school and the Mitchell-Lama housing project which is owned and operated by the plaintiff Trinity School and the Trinity Housing Corporation.

It is my understanding from reading the papers submitted by Trinity that their main concern, at least as respect to HUD, is to enjoin construction of a low income housing project on this Site 30.

As Mr. Morris has correctly pointed out, there are some preliminary technicalities. My view and perhaps

it would be the view adopted by the Court, would be to reserve decision on these technicalities pending the trial we are having now and then as part of the Court's decision in toto to pass upon the merits of these technical objections which I would like to address myself to right now.

THE COURT: Let me interrupt you to say the judicial anchor to windward is to reserve decision. In the old court, the belly was opened by the judge and he had to operate right there and then without x-rays and without any chemical analyses and you just didn't know whether the belly was to be examined or the skull so there was no reserved decision.

Rest assured, I intend to do exactly what you have indicated.

MR. LAND: Fine.

The technical objections are these.

The first is that there is currently no complaint alleging any wrongdoing on the part of HUD. What HUD has done has made certain studies in respect to this Site 30 and the conclusion of those studies have found that the information contained therein satisfied the requisite federal law and it approved the building of a low income housing project on Site 30.

This approval and the studies were all conducted

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in 1972 after the complaint was filed. Therefore, it is impossible for the complaint filed in 1971 to alleged errors by HUD when they did not act until 1972. It's impossible. No one can see into the future and this complaint certainly did not do that.

The reason HUD was a defendant in this action, at least from the papers that were served or at least from the complaint, is because HUD funds -- HUD provides federal money for many of these projects and it was, in effect, a nominal defendant because an injunction would of necessity have to run against HUD since it provided the money.

In other words, if the City was guilty of wrongdoing, the injunction must of necessity run against both the City and against HUD because HUD spends the money. However, there is nothing in the complaint which says that HUD did anything wrong.

In February and May of this year, Judge Weinfeld held two pretrial conferences, both in February and May. At that time plaintiff's counsel said they were ready to go forward with a motion for a preliminary injunction and that of necessity would be a motion based upon the complaint, ie., a motion without any allegations against HUD. They did not make any motions for a preliminary injunction until late this summer, when they made their current motion which

your Honor is dealing with now.

That motion for the very first time raised the issue that HUD had committed errors in the studies it had made, and it is our contention that because plaintiffs are guilty of laches in not amending their complaint when they could have done so at any time after 1972 and because they represented to the Court both in February and May of this year that they were ready to proceed, it is an unfair burden on both the Court, the United States and all those people who would otherwise expect to reside in this housing project to say that plaintiffs may now for the very first time introduce on the eve of trial a new issue not previously pleaded.

Now, plaintiffs have sought to get around that problem by moving to have another group intervene. The intervenors are represented by the same counsel that represents Trinity.

Also the intervenors, together with Trinity, did participate at conferences with HUD prior to the time HUD made its final decision.

In other words, the intervenors and Trinity participated in the proceedings before HUD so that the intervenors knew what was going on. The intervenors are not people who had absolutely no idea that this litigation was pending,

but knew all about it and suddenly come in as intervenors to pick up the loose ends which Trinity has not alleged, and the intervenors' complaint is virtually identical to the plaintiffs' complaint, except it does say that the findings by HUD are erroneous, arbitrary and capricious and that is the addition.

It is the Government's position that the intervention should be denied because the only purpose for the intervention is to allege these new issues not alleged by Trinity and which the intervenors and both Trinity could have alleged many, many months ago.

As part of the motion papers on this aspect we have annexed a recent decision of Judge Bartels about a week ago in which the same problem arose.

Plaintiffs had been before the Court for many times, suddenly interjected an issue as to HUD's findings, and Judge Bartels said, "Plaintiffs, you are guilty of laches, I am not going to hear anything about HUD's findings," and that was the end of it.

We find that that decision is eminently based upon sound law and wisdom and we think that that view should be followed by this Court.

If that motion were granted, in other words, we could have a decision on that motion and if it were granted,

HUD would not even have to appear in the remaining aspects of this case because the remaining aspects would be a question of whether the City of New York reached a contract with Trinity School, and that motion, or that aspect of the case could merely be decided on papers merely looking at the contract in question. But we are here on the hearing of HUD's findings and the Court will reserve decision on whether even after hearing the evidence on HUD's finding it would simply say, well, because of plaintiffs' laches, we are going to disregard that in toto.

The second aspect of this case is, and I think I should address myself to the merits, on a hearing of this nature, at least with respect to HUD, what is involved are two separate studies.

One study was required by the National Environmental Protection Act, and that act came in, I believe, late 1969. That act says that whenever there is major federal action which may significantly affect the human environment, then the responsible federal agency making such major federal action shall prepare a statement as to the environmental consequences of that action and to measure those consequences against the benefits to be achieved, and if the environmental negative consequences outweigh the benefits, then the particular major federal action shall not go forth.

On the other hand, if the agency determines that the benefits to be achieved are greater than the adverse environmental effect, then it shall approve the project.

That is, essentially, what the National Environmental Protection Act says.

However, before an agency must make the weighing of benefits of his environmental consequences it must make what is known as a threshhold determination and that threshhold determination is whether the proposed major federal action may significantly affect the environment.

In other words, if the agency says the action here will not significantly affect the environment, if it comes to that threshhold determination, then it does not have to weigh the insignificant environmental consequences against the benefits and a threshhold determination which says there will be no significant environmental impact, what is called a negative impact statement.

In other words, there will be no impact. In other words, it is a negative statement.

We have submitted to the Court HUD's negative impact statement under the National Environmental Protection Act and that is a document about three-quarters of an inch thick and it sets forth in some detail -- we will go through it during the proceedings here, I'm sure -- all the factual

findings that HUD made with respect to the entire environmental consequences of this particular Site 30 and the effect it would have on the community.

As the Court is aware, the rules for reviewing an agency action are whether the findings and conclusions are arbitrary and capricious. The agencies are given a presumption of validity, but that presumption may be overcome by evidence to the contrary, and if the evidence is to the contrary and it is found that the agency action was, in fact, arbitrary and capricious, as the Court knows, it may enjoin the agency or in this case may require HUD to make a full statement as to all the benefits and all the detriments before it may approve this project.

The second study that HUD made is what is known as a site selection criteria study. This is a study quite similar to a study under National Environmental Protection Act, but it is a study required by a separate body of law.

A brief history of this I think is somewhat important to put it in context.

In the late 1960s there were a number of lawsuits around the country challenging federal agencies building low income housing projects in areas which were already ghettos and the litigants contested saying, "All that federal agency is doing is recreating a ghetto, but in a new facade,

and that certainly is not a policy which the Federal Government should carry forward," and the Cours agreed.

The Court said, "Before any federal agency, and particularly HUD, before any federal agency may construct a low income housing project in an area which is already predominantly a ghetto, it must first have a systematic study made as to the consequences of this low income housing project in that particular area so that the federal agency will know whether or not there will be adverse consequences of building the project there."

As a result of that HUD has come up with regulations setting forth all the criteria to be measured when a low income housing project is to be build not in just a low income area or a ghetto but anywhere, so any time a low income housing project is built, regardless of the geographical location, HUD is required to make this special study. It is called a site selection criteria study.

HUD has made that study and that study also has been submitted to the Court and that study, likewise, is approximately three-quarters of an inch thick in papers. Many aspects of that study are identical to the study under the National Environmental Protection Act.

One aspect of this case which is interesting is that even in plaintiff's current motion papers where they

attack HUD for failing to make the proper study under the National Environmental Protection Act, they at no place mention the site selection criteria study. I don't know if that omission was intentional or not, but if the omission was intentional, then we essentially have no case here against HUD because the site selection criteria study in respect to the matters which plaintiffs challenge under the National Environmental Protection Act are identical, so you have to attack both or none.

Here they attack only one so presumably the site selection criteria study is correct and it says the same thing as the National Environmental Protection Act study, but plaintiff says only the National Environmental Protection Act is wrong.

Right now the thing is a little bit out of balance. We really don't know what they are challenging.

Also in their motion papers they do not say what aspects of the National Environmental Protection Act studies are wrong, all they say is we didn't do enough, but they don't say exactly where we didn't do enough or point to a particular part of the study that is erroneous and we are being left in the dark. This problem of being left in the dark relates back to where the plaintiffs have failed to amend their complaint, and, of course, had they amended

their complaint and alleged that the study that HUD made was for the following reasons and just listed them, then, of course, we would be much more prepared for trial here, but right now we are in the dark, we don't know exactly what aspects of that study plaintiffs claim to be wrong, and to some extent this will be a trial by first impression and as we go along I hope the Court is patient with the Government to be able to field whatever new matters Trinity comes up with in the hearing in that it is a trial without a complaint and that is what we are left with.

The Government will hopefully have two people testifying. One will be S. William Green, the regional administrator of HUD, who was the man in charge of finally approving all these studies, and he is a very knowledgeable federal official, has had great experience in this area and he will testify later on in this trial.

THE COURT: I am sorry to interrupt you. That I didn't know. S. William Green is the son of Mr. Louis Green, now dead, who were friends of ours for a number of years. I have had no contact with the son in the past few years, but I have high regard for him. I knew him before he became a lawyer. There was no great intimacy, we are not bosom friends, but they were, generally speaking, friends of ours who we visited from time to time.

That I think I should mention to you. It won't interfere in any way with my sworn obligation, but you are entitled to know it.

MR. LAND: The other witness we will present will be --

THE COURT: By the way, I am having lunch today with Judge Bartels. That goes back two or three weeks. He has something important. It has nothing to do with this matter, of course, and I shall not, of course, discuss this matter in any way with him, but I am going to take lunch with him today.

MR. LAND: The second witness the Government will present will be an expert on certain sociological phenomena which occur within ghetto areas and the essential nature of the proof will be that this particular area in the upper West Side is far from a ghetto and far from having any of the adverse effects which plaintiffs allege will result because of the building of this particular housing project.

THE COURT: Isn't that, to use the vernacular, the guts of the litigation?

MR. LAND: That is the guts of the litigation.

Finally, the final point is the question of whether this motion for preliminary injunction and the hearing

incident to it should, pursuant to Rule 65.2 be a trial on the merits. The Government's position is that it should be a trial on the merits because all the information, all the witnesses who would testify at a trial will be testifying here as far as this hearing is concerned.

Mr. Morris, I know, has explained to me that he has several out of town people, presumably experts, who might not be able to make this hearing on such a short notice.

However, if the hearing would require a week or more, which I think it may well do, I think that Trinity's counsel might be able to get these other experts here so that there would be no leftover facts to be adduced at a trial on the merits.

The reason why a trial on the merits should be held now rather than simply a hearing on the preliminary injunction, a decision and a trial many months later is that federal funds are made available, but only if the cost of the particular project does not exceed a certain limit. Once the cost of the project exceeds a certain limit, then no federal monies can be ex-ended.

From my conversations with people at HUD, we have not yet gone past that monetary limit. There is still room left to go. However, no one knows what is going

to happen in construction costs in the next five or six months. If the construction costs should take off, something we cannot control, then even if the Government is successful in winning this litigation six months down the road, the Government may, in fact, lose the litigation as a matter of practical reality because the cost had gone too high, and for that reason we feel that this should be a trial on the merits.

I think that would conclude my opening remarks, your Honor.

THE COURT: I appreciate it. It was very, very full and very helpful.

Mr. Land, for the sake of the record, then, what is the Government's position with respect to the application by Mr. Morris to amend his pleadings so as to include so much of the complaint as deals with the environmental impact statement?

MR. LAND: We would object to that on the grounds of laches.

Furthermore, I should say we have not yet been served with these amended pleadings, which I think might be appropriate.

THE COURT: He is asking for permission to amend and whether it is done by the papers or not is not the

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real criteria.

MR. LAND: Right.

THE COURT: You are against it?

MR. LAND: Absolutely, your Honor.

THE COURT: What do you say with regard to the reply papers he wishes to hand up and finish at a later time?

MR. LAND: The reply papers in regard to -- well, if the Court would permit them, obviously if the Court permits them to amend the reply papers cam come in.

If the Court says they cannot amend, then the reply papers are then irrelevant.

THE COURT: Very well.

Thank you, Mr. Land.

MR. GOLD: Your Honor, my name is Hadley Gold and I am from the Corporation Counsel's office and I represent the City of New York and many, many City defendants in this action.

As Mr. Land has pointed out in great detail, the basic complaint here and the thrust to some extent of this motion deals with the City's actions and particularly the City's actions as they effect Trinity School and Trinity Housing Corporation.

As your Honor knows from reading the papers, the

request for relief in this preliminary injunction is very broad and very sweeping. It would, in effect, if granted, stop all work on the West Side Urban Renewal area. That would include Site 30, which is funded by the Federal Government now at a point in excess of six million dollars -- the site is cleared, although the negotiations with the developer are not yet concluded -- it would include Site 4, which has been approved by both the City Planning Commission and the Board of Estimate as a site for a low income housing project and public school, combined occupancy type of project, and it would also include all the planned buildings, and I say they are in planning at the moment, on about a dozen or so more sites, practically the entire third stage of the West Side plan.

I want to point out the sweeping relief that the plaintiffs are seeking in this application because I think it is important to understand that I think really what they are interested in is preventing Site 30 from being built as a low income housing project.

The plaintiffs, basically, against the City, contend two items, as I see it, and they both relate to our contract with the Trinity Corporation.

Number one, that annexed to the contract and made part of it is the final or fourth amended version of the

West Side Urban Renewal Plan which Trinity contends binds the City to a particular mix of housing in the West Side area. Secondly, Trinity further contends that that plan cannot be modified without its consent.

With respect to the consent issue, your Honor, I think the contract is very clear on its face, as you will see, and really speaks for itself.

With respect to the other issue, the City, of course, admits and over a period of starting with the early or the middle '50s and running until the present time, that many, many changes have occurred in the West Side plan. No plan which encompasses 20 square blocks in Manhattan and at the time was probably the largest single urban renewal undertaking in the country, no plan was ever contemplated to be fixed or static or not to be changed.

As a matter of fact, when Trinity came into the picture -- their contract is dated in June of 1968, but assuming they were in the planning picture a year or so before -- the plan had already been amended. There had been four major revisions of the plan and many, many more revisions.

All of those revisions, I might add, were approved by both the City Planning Commission and the Board of Estimate of the City after public hearings.

we take no issue with the conclusions they arrived at

So that they were aware, fully aware of the fact that the original 1962 plan was not a fixed document and did not bind the City to remain in that position for the rest of its days with respect to this area.

But they are contending that we have, I think they used the word, emasculated the area so that it is not the kind of area that was contemplated originally by the framers of this plan nor by the plan itself, that we have, thereby, breached their contract.

The City's position is, I think, very simple and very clear. Yes, there have been many, many changes over the years. Those changes have been necessitated by changes in needs for the area, changes in the various programs available in order to produce housing, changes because of spiraling costs of construction, financing costs and many, many other factors.

It is our position clearly that the plan had built in flexibility from the very beginning, including the preliminary plan that it was never envisioned that this would be a fixed plan that would bind anybody, and we will hopefully be able to show that to the Court.

Of course, in the Court's determination as to whether a preliminary injunction should issue there are several factors, as you well know, that are involved.

all he is pointing to as creating laches, the parties

The immediate or irrepairable harm to the plaintiffs.

Plaintiffs started this action in June of 1971. As Mr. Land has explained to the Court, we were before the Court twice since that time before Judge Weinfeld in conference part and they indicated they were moving for a preliminary injunction. It was not until this summer, close to two years after the action started, that the plaintiffs finally made this motion for preliminary injunction.

I might point out that the annual contributions contract under which the Federal Government funds this project was signed between the Government and the New York City Housing Authority in December, in the latter part of December of 1972. About seven to eight months passed before the plaintiffs moved.

I mention this because I think it relates clearly to a real doubt as to how irrepairable and how immediate the harm is here to these plaintiffs which would warrant the kind of relief that they seek.

Secondly, of course, the chance of their success on a full trial in this action, I think your Honor will see as the evidence is developed that their chances of success on a full trial are somewhat remote in the light of that evidence, and thirdly, of course, the weight, the

We have no objection with respect to the prior

general damage to the defendant should this preliminary injunction issue.

Mr. Land has gone into it to some extent; the increased cost of the project, the possibility of losing the committed money from the Federal Government.

This is one of five projects in the City of New York funded by the Federal Government in 1973. There is at the moment no further money, so that it is most important to protect or to consider in the overall picture the protection of the interest of the public here.

IT is a little different than if we were talking about an injunction between two private individuals. We are talking about stopping at least 160 units of low income housing and perhaps more if the more sweeping relief is considered by the Court.

Although I think the environmental issue affects the City in the sense that we can clearly be enjoined if it is found that HUD has been remiss, perhaps, in what they have done, I do join with Mr. Land in the application with reference to laches on that issue. The same facts would apply. We were before the Court several times and here we are all of a sudden hit with a new issue.

Thank you, your Honor.

THE COURT: Yes, sir.

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I direct, further, that we proceed with the pre-

MR. DOUW: Your Honor, my name is John Douw. I represent Stryeker's Bay Neighborhood Council, which is also a defendant in this action, together with Mr. Robert Levy, who is behind me here.

I subscribe completely with what Mr. Land and Mr.Gold have said and I don't believe there is any need for me to add much more.

I would just like to elaborate a bit on the history of Stryker's Bay, not only in reference to the Urban Renewal Plan, but also in reference to this action.

Stryker's Bay Neighborhood Council is a community organization which has a contract with the City of New York specifically to participate in the development of the West Side Urban Renewal area and because of this position Stryker's Bay sought to intervene in this action in December 1971, shortly after the action was instituted.

That application was granted under Rule 24J(A) by Judge MacMahon. His order was dated April 1972.

It was recognized in his order that Stryker's Bay's posture in that matter was quite distinct from that of the governmental defendant because they represented interests, particularly the relocatees from the area, which not in every situation the governmental defendants might be willing or able to defend and represent.

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I should think the low-income-family issue seems to

At the same time, there was an application to intervene by two individuals who are relocatees and that application was denied both as of right and permissively because Judge MacMahon said that their interests -- they hadn't shown that their interests were inadequately represented, particularly now that Stryker's Bay was a defendant in the action.

As I said, I subscribe to Mr. Land's statement. We also oppose the hearing at this time on the issues involving the Environmental Protection Act as we raised that point in our brief, and also we are opposing the application for intervention by Continue and the two individuals.

We have submitted papers previously on that.

Part of the reason, since it links up with the problem of the amended complaint, in the intervenors' complaint they, as well, raise that question of the Environmental Policy Act and it presents, as you said, the guts of the issue, because here the Court must go into the sociological problems and it presents a real problem to us right here and now.

If this issue is heard we feel Stryker's Bay must, in justice to its interests, put on one or two expert witnesses to discuss this problem and it will perhaps add a day or two to this hearing if your Honor

themselves as to how they feel about it, but I think we permits. So the problem of laches does present a real problem. We subscribe to Mr. Land's position that it should not be heard.

Thank you.

THE COURT: Before we hear from Mr. Morris in reply to what has been said by the opposition, I would like to have the record show that when you were directed to proceed this morning before me, despite the fact that it might be most advisable that the in depth on the merits disposition of the entire litigation take place, that might be the most advisable course, the fact remains that you were sent here to start today with the distinct understanding that it was to be on an application for a preliminary injunction, in which event the totality of the evidence to be adduced would be different than if it were to be addressed to the litigation on the merits.

I don't know how long that would take. Suppose we interrupt this for a moment. Give me your wisdom. How long do you think it would take the Court to try all these issues involved in the totality of the pleadings and dispose of it with finality rather than piecemeal?

What is your best guess?

MR. MORRIS: I would say it would take weeks.

THE COURT: What do you say, Mr. Land?

One is whether HUD's study was in accordance

MR. LAND: It would obviously take no longer than the hearing on the preliminary injunction because the same issues are involved. The only difference, we will have the same witnesses at a trial and the hearing, Mr. Gold will have the same witnesses at the trial and the hearing, Mr. Douw will have the same witnesses at the trial and the hearing. It is solely up to Mr. Morris as to what witnesses he wants to put on.

THE COURT: How long do you say it will take if we went ahead the way you have outlined it?

MR. LAND: Well, the hearing will take, probably the defendants' case, maybe three or four days. That would be the same length of time as the trial, no different, same case.

THE COURT: What do you think, Mr. Gold, counsel for the City?

MR. GOLD: Your Honor, it is a very, very difficult thing to say.

I spoke to Mr. Morris this morning about witnesses and he said to me, I think, he has 12 witnesses lined up for this hearing, that that would take him three or four days alone. I wasn't sure whether that included our cross examination of those witnesses or just the direct testimony.

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and hold that it is a test of reasonableness.

It is impossible to assess. I would tend to agree with Mr. Land that generally probably the issues are the same, except I imagine in a full blown trial you are going into greater depth because you are really going into a determination on the merits.

THE COURT: Look, gentlemen, you --

MR. GOLD: I would think it would take, based on what Mr. Morris has said in any event, his case would take a week to a week and a half alone, it seems to me.

THE COURT: I wasn't told that by Judge Weinfeld. I haven't got any week or ten days.

MR. MORRIS: No, in the event of a full blown trial, Mr. Gold means.

THE COURT: How long will this take, the preliminary injunction? Let us understand each other.

MR. MORRIS: We should be able to finish it within three days or possibly somewhat in excess of that. A full blown trial will go on for weeks.

MR. LAND: If Mr. Morris is going to have 12 witnesses, I know of no way we can complete this in three days if the defendants are allowed to cross examine the witnesses.

THE COURT: All right. I have the benefit of your

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statutes may apply here, that's an issue.

answers.

The next thing I would like to ask you and to solicit your help on, can we agree on what are the throbbing, vital heart issues? In other words, there is no use going after the kidneys and the lungs if the heart is not going to survive. It is silly.

I have a factfinder all my professional life.

Let us face reality. What are the fact issues that are vital, imperative that you can't thrust aside that you have to constantly look at and meet? Why don't we address ourselves to those and why don't you all agree that this is the vital issue, the second and the third or maybe just one or two. What's wrong with that?

MR. MORRIS: I agree and in my opinion, your Honor, there are four vital issues.

THE COURT: All right. You agree.

What is wrong with it, Mr.Land?

MR. LAND: Whatever issues he wants to raise is fine with us.

THE COURT: No, not what he wants. I want you to advise me what the issues are. I would like to have the benefit of astute counsel that are before me, we are agreed that the guts of the case call for the resolution of the following fact issues. The most imperative

individuals will consent before there could be any change

is X, the next in importance is Y for our purposes. Then, Judge, you are going to reserve decision on all these other phases, which you will undoubtedly be thinking about and disposing of as we go forward. You are calling for proof. These are the issues.

I am going to leave you to discuss it among yourselves so that when you come out in a few minutes you will tell me this is what you have resolved.

Let us be in agreement on it. As to how the Judge is going to go is a different proposition, but you are going to throw in whatever you got on those positions.

All right?

You nod your head in approval. Once in a while when a lawyer nods his head in approval he later finds out he doesn't know what is going on.

Mr. Morris, do you agree?

MR. MORRIS: I agree.

THE COURT: All right.

Mr. Morris, I will give you a couple of minutes to answer the contentions that were placed on the record so effectively by opposition.

MR. MORRIS: Yes.

First, Mr. Land stated that there is no wrongdoing by HUD alleged in the papers and in this program. That

is not correct. There is wrongdoing by HUD, and the reason for joining HUD in the original action, and that reason has been accentuated by the development of the law, which has been major, between now and the time when the action was instituted, and that is this, that HUD was furnishing the financing for this public housing to which Site 30 and Site 4 were being converted. That was the agency which had the discretion to determine whether or not that financing was to be furnished. That alone is a basis which we allege in our complaint and which we contend their doing is wrongdoing and that will be one of the major issues we will have before your Honor.

The second is that HUD violated, in concluding as it did, that it would finance this conversion from middle-income to low-income housing, the provisions of the National Environmental Protection Act, NEPA, and its own HUD regulations which require it to make a finding as to whether or not an environmental impact statement is required.

They made a negative finding and decided no environmental impact statement is required. We argue that was error and that this Court has the authority to review that determination, and that was another act of wrongdoing on the part of HUD. Therefore, there is clearcut involvement of the U.S. Government and it is upon those grounds that we argue that the U.S. Government is involved and was a wrongdoer in what they have done in this case.

In addition to that, there has recently been -- I said that there have been major changes in the law between the time this pleading was prepared by us when NEPA was a relatively new statute, nobody knew much about it, and today.

Last week, as an illustration of that, a decision came down from the Circuit Court of Appeals in the Otero case -- we have a complete memorandum of law on it, including the opinion of the Circuit Court itself -- which

relates directly to the issues in this case and is another basis upon which the U.S. Government is a wrongdoer in what it has done in this case, and we allege in our complaint violations of the Civil Rights Law, and that is what the Otero case deals with.

THE COURT: You are going into it too deeply right now. I will have to study all that.

What else in a general way do you have to say, if anything, with regard to what Mr. Land and others have said?

MR. MORRIS: Yes.

Another point that Mr. Land made in which he was mistaken was that the intervenors were brought in solely to correct errors, deficiencies we made in our complaint.

This is simply not the case, your Honor. Any deficiency that exists in our complaint, and we urge there is no deficiency, that on the face of the complaint this was properly pleaded and is before the Court. We also, as I stated at the beginning, have made a cross-motion to amend so that everybody is happy, and we state in there that it does include the Environmental Protection Act. So that the question of the pleading is in no way involved with the intervenors. They are called in on the merits because they have interests which vary from the interests

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of Trinity School, they have interests which supervene and are in addition to the interests of Trinity School and their intervention on the merits, must be considered on the merits and is brought before the Court because of its merits in connection with the action and not because we seek to cure any pleading with respect to that.

THE COURT: All right, Mr. Morris, cut it short. What else would you like to say?

MR. MORRIS: Yes.

We also argue that the threshold determination made by the Federal Government which Mr. Land said was a complete study is not a complete study at all, within the meaning of the National Environmental Protection Act, is totally inadequate, and that that issue must be explored.

THE COURT: I got it. I got it.

MR. MORRIS: We also urge that the preparation of the site selection criteria study is a preparation of a study that is totally unrelated to the Environmental Protection question. It deals with a different subject not related to the Environmental Protection issue at all. They are two separate issues.

THE COURT: All right.

MR. MORRIS: On the site selection criteria study,

No harm is done whatever. All you do is make your motion

we take no issue with the conclusions they arrived at there. It is irrelevant to this proceeding. The NEPA is the crucial thing and there is no interrelationship between those two, as Mr. Land seeks to indicate to the Court there is.

On Mr. Land's --

THE COURT: You are not going to make me regret that I invited you to respond, are you? Just sum it up.

MR. MORRIS: Yes.

THE COURT: I don't want you to go into detail.

MR. MORRIS: I think there are several important things that were said by Mr. Land which your Honor must understand our position with respect to.

THE COURT: All I ask you to do is not to argue it, just tell me in essence it amounts to this and state it, see.

MR. MORRIS: Yes.

On the laches question which Mr. Land claims we have been guilty of laches, the simple fact is we have not been guilty of laches but have moved promptly and the final determination as to the conversion of Site 30, which is the gut issue in this proceeding, was not made until February 1973. We moved in July of 1973 and during that intervening period of four or five months, which is

You know the old-fashioned tailor who grabs

all he is pointing to as creating laches, the parties were not prepared to go ahead because the Housing Authority and the developer couldn't get together on the price and the design of the building and all the rest, and, therefore, that four or five-month interim period which he urges is the basis for laches was no more than a period when the project was processing, nothing was being stopped, nobody was --

THE COURT: You are repeating.

MR. MORRIS: -- nobody was hurt.

THE COURT: I got it. What else do you want to say?

MR. MORRIS: That's all as to Mr. Land.

As to Mr. Gold, he says the breadth of our belief is so broad they can't build another project in the West Side Renewal area. That is not so. Our relief is very simple and very sharply aimed. We are not aiming our relief with a shotgun here; it's a rifle. And the rifle is aimed at bringing in more low-income families and that's all. There is nothing else. We don't seek to stop them from proceeding in the West Side Urban Renewal area; we say no more or beyond the original percentage fixed of low-income families, so that it is not a broad request for relief.

phrase is used, in that area. Many urban renewal projects

We have no objection with respect to the prior revisions that were made which Mr. Gold indicated we had objection to. There is no objection to that.

On Mr. Douw's comment where he said the denial by Judge MacMahon was made as to two of the individuals, he did not point out that those two individuals didn't even live on the site, they had nothing to do with the site, they were just two low-income families who apparently were picked out of a hat and brought into the proceeding, and Judge MacMahon said, "No, we don't want them in," and that was not mentioned to the Court in connection with that.

THE COURT: All right.

Thank you, Mr. Morris and gentlemen.

Number one, without in any way incurring penalties of any kind, I direct that the papers seeking an amendment be served. I do not grant the application; I merely want to take advantage of time to act expeditiously, let the other side know exactly what Mr. Morris has in mind and let Mr. Morris know what the other side has in mind so that, by accepting the papers, you please understand that your objection to the attempt to amend still stands strong and viable and we will deal with it in time. I just want you to know what Mr. Morris proposes to do.

I direct, further, that we proceed with the preliminary injunction and that the evidence adduced with respect thereto shall, of course, be applicable when the matter is heard, the total matter is heard in depth, and if as we go along I should find reason to change the ruling, we are always ready to make a direction, depending upon what has been adduced. If I should be struck, for instance, by certain evidence that prompts me to realize more then than now that this really is the total answer and we should explore it to the full, and everything else is of petitionary value, why, I might make a different direction, but at least we are opening with the distinct understanding that it is addressed to an application for a preliminary injunction without committing the Court to the finality of that position at this time.

The application to serve reply papers is granted with the distinct understanding that the balance of the reply papers should be forthcoming as expeditiously as possible.

I am going to declare a short recess. I would like counsel to get a breather. I would also like them to immediately engage in what to me -- and you have not opposed it, you seem to encourage it -- is what we should be doing, and that is going after the vital issue.

I should think the low-income-family issue seems to be it, to use the common language. That's the all important issue. If that survives, why, such-and-such falls. If it doesn't survive, a different situation will be created.

So, will you please, because I have faith in you, and you are not looking to pull any tricks -- we don't have that kind of lawyer in the Federal court, we have people who are ardent and sincere and devoted to their causes and they fight,as they should, every inch of the way, as long as they do it with politeness and consideration, that's what you are here for. I won't undertake all of this. I'm a Senior Judge. There is nothing in the law that says I have to sit. The law says "go fishing." You are stuck with me because I don't know how to fish.

A short recess.

(Recess.)

THE COURT: Mr. Morris?

MR. MORRIS: Yes.

Your Honor, we conferred in accordance with your direction and we are in agreement, or at least I expressed my view as to what I thought the four essential issues were in this proceeding in accordance with your Honor's direction, and co-counsel will each speak for

themselves as to how they feel about it, but I think we are in agreement.

The issues are as follows:

1. Whether there has been compliance with the National Environmental Protection Act by HUD in connection with its findings.

2. Whether there has been compliance with the provisions of the Otero case with respect to the Civil Rights Law aspects of the case, which relate to tipping point and elements of that sort. That is number two.

3. Whether there has been a breach of contract between the contracting parties, the plaintiffs, and the City in the manner in which the City has performed under the terms of the contract.

4. Whether there has been a breach of the clause in the contract which was entered into by the intervenors which provided or which required that those in the pilot project area are required to consent to any changes in the Urban Renewal plan in writing.

Those are the four issues.

THE COURT: What does the Government say?

MR. LAND: The Government agrees, but we would like to simply restate the issues so it is sure of them as this thing proceeds.

One is whether HUD's study was in accordance with the National Environmental Protection Act.

THE COURT: Acceptable?

MR. MORRIS: Acceptable.

THE COURT: Acceptable by the City?

MR. GOLD: Yes, your Honor.

THE COURT: Acceptable by Mr. Douw?

MR. DOUW: Acceptable.

MR. LAND: And one further caveat I have to add on that. The test, the judicial test of whether HUD has complied with law and whether its findings will be upheld is the arbitrary and capricious standard set forth in the Administrative Procedure Act.

Is that all right, Mr. Morris?

MR. MORRIS: May I confer for just a moment?

THE COURT: Surely.

(Pause.)

MR. MORRIS: With respect to the latter statement about the arbitrary and capricious, there is a case in the Second Circuit, Handly, which is a dominating case in this field, which did say that arbitrary and capricious is the test and, therefore, it would appear that that is the law in this jurisdiction.

However, other jurisdictions hold otherwise

their school site on 91st and 92nd Street and move up to

and hold that it is a test of reasonableness.

THE COURT: All right. But you are not against evidence going in on that score?

MR. MORRIS: No, no. But I am just not conceding that it is an arbitrary and capricious test.

THE COURT: You are not conceding any of these factors.

MR. MORRIS: Yes.

THE COURT: You say they are the issues that should be resolved?

MR. MORRIS: Yes.

THE COURT: All right. So that is acceptable and the caveat is acceptable to the City and Mr. Douw.

MR. GOLD: Yes.

MR. DOUW: Yes.

THE COURT: What is the second?

MR. LAND: The Second Circuit last Tuesday decided a case called Otero which involved the Civil Rights Law generally, the Civil Rights Law including things like equal protection clause of the Constitution, the various Federal statutes dealing with civil rights and judicial opinions setting forth further tests guaranteeing civil rights.

To the extent that that opinion and all these

statutes may apply here, that's an issue.

Is that correct?

MR. MORRIS: Yes, that's correct.

THE COURT: All right.

Does the City agree?

MR. GOLD: Yes, your Honor.

THE COURT: Mr. Douw?

MR. DOUW: Yes, your Honor.

MR. LAND: The third issue is one solely between Trinity Episcopal School and Trinity Housing Corporation vs. the City of New York, and that issue is whether the contract between the two Trinities and the City was breached because of the general changes in the West Side area after the fourth revision of the West Side Urban Renewal plan.

THE COURT: Mr. Morris?

MR. MORRIS: Yes.

THE COURT: The City?

MR. GOLD: Yes, your Honor.

MR. DOUW: Yes, your Honor.

MR. LAND: The fourth issue is solely between the two individual intervenors, whose names are Karlan and Hudgins, vs. the City of New York, and that issue is whether the contract between them required the two

infusion of additional low income familiares took various forms.

individuals will consent before there could be any change in the West Side Urban Renewal Plan and particularly on Site 30.

THE COURT: Accepted, Mr. Morris?

MR. MORRIS: Yes, except for one amendment, and that is that there are a number of the people represented by the Continue group who also are in the pilot area and are affected by the same question.

THE COURT: All right, Mr. Land?

MR. LAND: Well, okay, if that is the case, that will come out and we will accept that as an issue.

I would like to say two things, finally:

Mr. Morris agrees with me that these four issues are the same four issues which would be raised in a trial on the merits. There are no further issues to go into.

MR. MORRIS: May I speak?

THE COURT: Wait a minute. Please. Now you are starting something. I don't want that.

MR. LAND: I just want to say, as far as I know, Mr. Morris is now stating to me that in the event we have to have a subsequent trial on the merits that there will be no more issues than what we have stated here.

THE COURT: First let me get through with what you agree are the four primary or most essential factual

issues that have to be resolved.

Are you through stating them?

MR. LAND: I believe so, your Honor.

THE COURT: Is there anything that anyone wishes to say with regard to the recapitulation by Mr. Land of the issues that you have consented to?

I don't ask you to say yes, meaning that you agree with every word, but that the general purpose stated by Mr. Land is what you understand and what you agree to.

What do you say, Mr. Morris; "yes"?

MR. MORRIS: Yes.

THE COURT: Mr. Gold?

MR. GOLD: Yes, to respond directly with just a slight clarification.

THE COURT: Yes.

MR. GOLD: With respect to the consent, that last issue, the consent of Karlan and Hudgins and now Mr. Morris saying there are a number of brownstone owners involved in the Continue group, although I think, I think all of the contracts between the brownstone purchasers and the City are alike, particularly the boilerplate language, and that's what we are really involved with here -- Mr. Morris might be helpful in this direction since

he has been involved in this whole development for many years -- I'm not sure they are all alike, so with the one reservation, since we only have before us the Karlan contract as an exhibit, with the one reservation that I be able to verify whether each one of those contracts is corract.

One more point, your Honor. Mr. Morris has now, by limiting the consent issue to the intervenors only, I assume, dropped the consent issue with respect to Trinity.

THE COURT: Is that right, Mr. Morris?

MR. MORRIS: The written consent issue.

THE COURT: You do drop it?

MR. MORRIS: I do drop it.

THE COURT: Thank you, Mr. Gold.

Anything else from you, Mr. Douw?

M.R DOUW: No, your Honor. We only have the same reservation about the possible differences in contracts of the various members of Continue.

We have before us the contract of Karlan and we have gone on the assumption that that is a representative contract. If that is the case, then so be it.

THE COURT: All right.

Mr. Land just raised the additional point that

Mr. Morris stated on the record, that he agrees that the issues we are about to undertake to determine are the same issues and the totality of the issues that would be involved in disposition of the entire litigation on the merits.

Is that what you are saying?

MR. LAND: Yes, your Honor.

THE COURT: Is that in essence so, Mr. Morris?

MR. MORRIS: Yes, I think it is so.

However, I wish to state that I am not prepared at this time to try the entire issue on the merits because it requires testimony going over and beyond the testimony called for in this evidentiary hearing.

THE COURT: All right. We are going forward. If I disagree with Mr. Morris after I hear what you have to offer and I put it right to him, "What else have you got," and he then makes a recital that is impressive, I will say there is wisdom in your possession, and if I disagree with him, I am going to say, "Proceed, let us button the whole thing up. You go over to three weeks, four weeks, or whatever I need to complete it."

I remind you again that I am under the strain of my own discretion. I have no complaint to anybody, but I have obligations, I have commitments, including a

commitment to the Chief Justice of the United States to sit and determine issues that come before me outside of this State, and that will happen within the next few weeks, so you see I'm loaded. It isn't a matter of being able to do it as expeditiously as we all like. I will do the best that is humanly possible

Proceed.

MR. LAND: Wait. One final comment, your Honor.

In the papers, the written memorandum that we will file at the conclusion of this hearing, we will, again, raise the question of laches and all these other technicalities.

THE COURT: Surely.

MR. LAND: I think right now it is our view that some of these issues raised here are not in the pleadings and we just want to make clear on the record that we are not waiving any of our technical claims about laches on these issues.

THE COURT: I want counsel to understand that all their objections are to be clearly stated on the record, that I reserve decision on their objections, that I will entertain at the appropriate time a motion to strike evidence that in the light of my ruling, if I had made it at the beginning, we wouldn't have received such evidence.

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No harm is done whatever. All you do is make your motion to strike evidence as being improperly received in the light of such-and-such, so that you are all fully protected. That goes for all parties.

Mr. Morris, you have the burden.

MR. MORRIS: Yes. I have an opening statement, if your Honor will allow me.

THE COURT: Over and above what you have already said?

MR. MORRIS: I haven't made my opening statement.

THE COURT: What did you make before? Wasn't that an opening statement?

MR. MORRIS: No, sir, it was not. I merely alluded to what the issue was that was before the Court, but I made no statement with respect to the situation that the Court is confronted with.

THE COURT: How long will it take you to make the statement?

MR. MORRIS: Well, what I would like to say is I can do it in half an hour and I can take three hours, if necessary.

THE COURT: No, I would like you to make it very brief, because with me, each man to his own ways, I want the proof. This is what counts with me.

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it. What else?

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You know the old-fashioned tailor who grabs a hold of a garment and says, "It's 73 per cent wool and the rest of it is cotton." Others want a chemical test and a microscopic examination and all that sort of thing.

I want the proof. Let us get going on the proof.

MR. MORRIS: Yes, except that I do think a few minutes would be helpful to the Court.

THE COURT: A few minutes? I am perfectly willing to a few minutes. You are talking about --

MR. MORRIS: It would be helpful to the Court in order to set up a frame of reference in which the testimony can be adduced.

THE COURT: Very well. That would be helpful.

MR. MORRIS: Yes.

The West Side of Manhattan used to be one of the luxury areas of New York. During the period of World War II and subsequent to that, rather marked changes occurred in that area in terms of ethnic composition, in terms of the level of income of the people occupying it, religious differences,and various other changes occurred rather radically, so that by the mid 1950's there was a situation on the West Side of Manhattan wh... action was necessary under Title 1 of the National Housing Act of 1949 to upgrade or bring about urban renewal, a... the

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into it as an advocate you devalue your testimony in my

phrase is used, in that area. Many urban renewal projects were created; Lincoln Square just below where your Honor resides, and Morningside Heights, and Park West Village, and a number of others.

After those projects, which were basically bulldozer projects where you wiped out the whole slum area and you only dealt with an area of a slum, the National Housing Act was amended in 1954 to provide that urban renewal did not thereafter have to involve an area which was totally decayed, but could involve a resuscitation of an area which was on the downgrade, where there were bad areas, there were pockets that were salvageable, and there were good buildings which wouldn't have been eligible under the old law.

So, the 1954 amendment to the National Housing Act gives us the foundation stone for the whole urban renewal project under the West Side Urban Renewal area.

Shortly after that amendment, the City of New York engaged in a study of the West Side Urban Renewal area, which is the area from 87th Street to 97th Street, between Central Park West and Columbus Avenue. A complete study was made by a group that had been designated by the Mayor under James Felt, and he prepared what was called a preliminary plan. That was a study financed by the

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Federal Government to incorporate for the first time in history the concept of conservation of a district rather than bulldozing it out and building a whole new area, and that was the concept of the West Side Urban Renewal plan. And the theory was to take an area that was on the downgrade and to bring about changes which would have the effect of reversing that downward trend and would permit the area to go back to its former condition of being a very fine area, an excellent area to live in, and one that everybody was happy with, plus one other element that had not existed previously, and that was that it be an integrated area, that it be integrated.

Now, that is crucial to our whole case, because we do not come here saying we don't want integration. We do want integration. The reason for this action is we feel that by virtue of what the United States Government has done and the City of New York has done, they will destroy the integration which we have worked so hard to bring about, and we, therefore, foster integration. That was the initial concept of this West Side Urban Renewal plan.

Well, in 1962, the plan was finalized and it became what we characterize under the Federal procedure of Title 1 an Urban Renewal Plan. That is a plan where

THE WITNESS: Right.

the City is given funding, capital funding, by the Federal Government to go ahead and accomplish this plan and then dispose of individual sites in the project area to individual developers who will develop their site under the requirements of the urban renewal plan, and those requirements of the urban renewal plan are covenants running with the land. They are binding covenants that bind every purchaser and user of land in the West Side Urban Renewal area. They are bound by those covenants by what is called the urban renewal plan. That is the key document in this proceeding.

What happened then was they went ahead after 1962 and started redeveloping the area. Well, it was miraculous. The area changed completely. They began to relocate the tenants, put up the new buildings, rehabilitate the buildings that required rehabilitation, act on a conservation basis for the good buildings, to keep them, the ones on Central Park West and along that area, and for four years the plan proceeded very favorably and precisely what the plan undertook to do was accomplished. The area is upgraded, there was a strong integration element, there were people of all races, creeds, all income levels introduced into the area, and everybody felt that this was a resuscitation of the entire West Side of Manhattan resulting

from this urban renewal plan.

In 1968, when my clients entered into contracts to spend money to proceed in accordance with the provision of the urban renewal plan, they saw visual evidence of what had been accomplished. They had representations from the City and the Federal Government as to what the concept of the plan was, what it would do and what it would mean to make an investment and live in that area in the future.

it is a pretty good street.

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In addition, they had written contracts which obligated the government to develop that project in accordance with the provisions of the Urban Renewal plan then in existence. Therefore, they had what we aregard as a sound basis for going in and making substantial expenditures of funds in the area and make those investments based upon a belief that there would be performances by the government of the undertakings set forth in the Urban Renewal plan.

And my client Trinity went ahead and developed an extension of its school facilities and housing rights above the school to the extent of $8,800,000. That is what was invested by my client.

Now, Trinity is one of the oldest schools in the country. It was formed more than 200 years ago. It has been located at this site since the 19th century. They were at the point where the area was deteriorating where they decided they had to get out, they couldn't stay in the area any more, and when the West Side Urban Renewal plan came along and they were contacted around the mid 1969 -- I was the one that contacted them because I represented many of the developers in that area -- and I persuaded them that with the change that was about to be brought about through the Urban Renewal plan they should remain in the city and not give up

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is all right. I don't know.

their school site on 91st and 92nd Street andmove up to Pawling, New York where they had another site where they were already operating another school, which they were all prepared to do. They decided no, "We see what's happening. The obligations are clearly set forth in the contract. Wewill agree to spend this huge sum of money to make a new investment in the area on the basis of the representations made by the government," and they did precisely that.

Also the intervenors went into 94th Street and spent substantial amounts of money in rehabilitating properties which they bought, spent substantial sumbs and made a very important investment in the future of that area on the same representations and based on the same Urban Renewal plan.

Subsequently, while they were building their building in the late '60s and we come into the early '70s, there was a great deal of pressure upon the city from various groups to introduce more low income families into the area.

Now, during the period and under the provisions of the plan there was a fixed ratio of low income families to middle income and to luxury families. That was established in the late '50s and the early '60s. That was modified several times. But by the time our clients contracted

with the government to proceed with this plan, the modification was one which permitted integration on a sound basis. It was roughly a 70-30 ratio, 70 per cent white, 30 per cent non-white.

I use the phrase non-white to include all categories other than whites. That was a ratio our clients were happy with. They felt this was desirable because they wanted to live in an integrated area where there were all levels of people and all kinds of people. And it was upon that basis that they contracted.

When the change occurred and the government came along and began to introduce into the area more low income families than were originally contemplated, a reversal began and the area began to slip all over again. Now, that introduction of more low income housing is the guts or the core of our position in this proceeding.

What happened was, because of pressure on the government, and pressure came from various sources and I am not going to point a finger at anybody but there were pressures, that everyone knows and everyone understands, the city acceded to those pressures and began to put more low income people into the area than they had committed themselves to do initially and than was the commitment at the time my clients entered into their contract, and that

infusion of additional low income familiares took various forms. One of the mo[illegible]fficult and troublesome forms that it took was that when a number of the middle income buildings were completed, such as Leader House and Columbus Manor and Westwood House, they were fine middle income Mitchell-Lama buildings and the Department of Welfare put a large number of Welfare problem families into those buildings and loaded them with that type of tenacy instead of the middle income tenants which were originally contemplated to belong into those buildings. That was one of the things that they did.

Then they did other things. They introduced more low income families by what they called skewing of rents, where they took the rent that was required for the building and charged a higher rent to some tenants so they could charge a lower rent to other tenants and bring low income families into the building.

They also used the federal program of Section 23 Leasing, which is a subsidiary program to permit low income families to move in.

They also used the State Capital Grant Program, which is the same thing, and a number of the other devices which were available to permit low income families to be brought into the area.

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At the point when we started our action in 1971 the area was delicately balanced with respect to a phrase we call tipping point, and I will explain that in a minute, but it was delicately balanced, and at that time they announced that Sites 4 and 30, which are the real issues in this proceeding, were going to be converted from middle income housing to low income housing, and this was in response to pressure they received from a group of squatters who moved into buildings in the area and the city had to negotiate to get them out, and the city did negotiate with them and made agreements with them where it agreed that it would put in more low income housing to the damage and injury to my clients.

That again is one of the issues in this proceeding.

They then, as soon as they announced they were converting Sites 4 and 30, which involved a total of some 450 units, to more low income housing, my clients then said, "This area is being destroyed, they are violating the provisions of the Urban Renewal plan and their contractual obligations to us, let us takethem to court and stop them from doing it," and that is when the action was instituted and that is when this matter came into court at first.

Now, that was two years ago. In the intervening

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period, many, many things have happened and there has been a great deal going on and the area has continued to deteriorate so that there is an increase in crime, there is an increase in drug addiction, prostitution and all the other evils of what ghettoization usually entails. That came about as a result of the fact that by the infusion of these vast numbers of low income families into the area they created a situation where the area approached what is characterized in sociological terms as the tipping point.

Now, the tipping point means generally that where you put more than a certain percentage of non-whites into an area it will have the effect of causing the whites to flee the area and end up over a period of time of more and more non-whites coming into the area until eventually you get what is a ghettoized area and you are back in the same old ghetto, and that is what is meant by tipping point.

Now, that concept of tipping point was introduced into our papers and we have argued it extensively, but last Wednesday the Circuit Court of Appeals came down with the Otero case where they held precisely as we have argued in this situation that where a tipping point is reached in an Urban Renewal situation, it is wrong and in violation of the civil rights law to introduce more non-whites into that area and exceed the tipping point percentage because

eventually it will result in ghettoization and, thereby, violate the provisions of the civil rights law. The Otero case, therefore, is crucial to our position, and although it just came up recently, we have submitted a new memorandum of law where we have included the decision for your Honor to look at himself.

These are the papers for the Court.

THE COURT: Thank you. Hand them to the clerk. Thank you.

MR. MORRIS: Yes. There is a complete new brief on the Otero question.

THE COURT: Having been the product of a ghetto myself, I can lend a certain amount of understanding that is not given to those of you who were brought up on a silver spoon. I don't use the word gold, you notice.

MR. MORRIS: I am also the product of a ghetto, your Honor.

THE COURT: In other words, don't start in that you are imagining you are before a Judge who has not known both sides of the transaction. We have starved in my life. We moved every month because we couldn't pay the rent. I know all those pictures. I went down to the railroad tracks to pick up pieces of coal that fell from the moving cars to bring it home to the pot-bellied

stove that was the only source of warmth, putting cardboard inyour shoes in the wintertime. I know all about it. Wearing your father's tie and everybodylaughs at you, patches on your pants and coats, the misery of economic deprivation. I am as good a witness as anybody.

MR. MORRIS: Yes, your Honor.

THE COURT: Go on.

MR. MORRIS: And the effect as of this moment in the hearing before the court on this motion for a temporary injunction is that the west side --

THE COURT: Are you going to move to disqualify on that statement, Mr. Land?

MR. LAND: No, your Honor.

MR.MORRIS: The effect of what I have just described on the west side Urban Renewal area is that the area is now on the downgrade and is heading toward ghetto-ization and we have brought this proceeding requested this Court to enjoin the conversion of Sites 4 and Sites 30 to low income housing and in broad general terms to enjoin the further introduction of low income families into the area in order to avoid the danger of reaching the sociologically defined tipping point.

THE COURT: I got it. I got that point. You made it very effective. There is no use in embellishing

Q Just give us the price of the cost of renovation.

A. What else?

MR. MORRIS: That is the issue and that is what is before your Honor and I will adduce testimony to support that.

THE COURT: Fine. Let us proceed.

MR.MORRIS: Yes.

THE COURT: To show you that I amnot sleeping on the job, may I, with great respect, compliment you on your verbal recital, oral recital, point out to you that it is a recapitulation of your splendid memorandum to the Court which we read and that you offered me nothing new that I wasn't acquainted with from that fine memorandum. That was the reason I wanted to halt you at the beginning, but we got the benefit of your oral statement in addition and that reemphasizes it.

R O L A N D N. K A R L A N, called as a witness by the Plaintiffs, having been first duly sworn, testified as follows:

THE COURT: Mr. Karlan, I have said this many times to witnesses. You are not an advocate, you are a witness, you are a sworn witness, you will answer only what is put to you. Do you understand that?

THE WITNESS: Yes.

THE COURT: The moment you start to inject yourself

THE COURT: Will you wait just a moment?

into it as an advocate you devalue your testimony in my eyes.

Do you understand that?

THE WITNESS: Yes.

MR. MORRIS: At the outset, let me introduce Mr. Spector, my partner.

THE COURT: Mr. Spector, very good to have you. Why don't you sit down and make yourself comfortable.

Are you going to carry on in the absence of Mr. Morris?

MR. SPECTOR: It appears that way.

THE COURT: Let us hope you will be equally good.

MR. DOUW: We have had a division of labor on behalf of Strycker's Bay and I would like to have Mr. Levy do the cross examination.

THE COURT: Very good, sir. Anything that you believe will help us is agreeable with me. I like to have you divide your work, so long as you remember what I am after, gentlemen, are facts and I am pretty good at it, if I may say so myself. Give me the material, give me the data, give me what you are screaming about, let me see it, and when I look at it I will make my own evaluation.

Please proceed.

that the witness even knows what the West Side Urban Renewal

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Karlan, what is your occupation?

A Advertising.

Q Advertising?

A Yes, sir.

Q And where do you live?

A 34 West 94th Street.

Q Is that located in the west side Urban Renewal area?

A Yes, it is.

Q And is it part of what is characterized as the Pilot Project Area?

A Yes, it is.

Q Do you occupy a brownstone there?

A Yes.

Q And when did you acquire that brownstone?

A About 1967.

Q 1967?

A Right.

Q Were you familiar with the situation in that area prior to the time that you acquired your property on 94th STreet?

A Yes.

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THE WITNESS: Well, I was coming out of the

Q And would you describe for the Court the situation with respect to that area at the time prior to your acquisition of the property?

MR. LAND: Objection to the form of the question as being too overly broad, your Honor

THE COURT: It might very well be, but let us see how the witness handles it and if he doesn't go into it with the kind of precision that is imperative, why, we will act.

Go on.

A Well, it was in the process of renewal and improving greatly.

In 1962 when I first moved into the west side there had been, from what I -- there was a race war and I heard shots and the police were there, it was a very poor condition, but gradually it was improving.

Q Before you moved to 94th Street?

A 96th Street. 110 West 96th Street..

Q What is it?

A 110 West 96th Street.

THE COURT: How long did you live there?

THE WITNESS: Seven years.

I am sorry, nine years. No, no, about eight years.

THE COURT: About eight years?

THE WITNESS: Right.

THE COURT: Did you live at 110 West 96th Street with your family?

THE WITNESS: Yes,sir.

THE COURT: How much of a family did you have when you lived at 110 West 96th Street?

THE WITNESS: Wife and two boys.

THE COURT: How old were the boys when you began to move there, approximately?

THE WITNESS: Ten and twelve.

THE COURT: All right.

Then you stayed there for a period of about eight years?

THE WITNESS: Right.

THE COURT: Then you acquired this property on 94th Street in the year 1967?

THE WITNESS: Yes, sir.

THE COURT: And those same two boys went to live with you there and your wife?

THE WITNESS: Yes, sir.

Q So that you are familiar of your own personal observation and knowledge with the situation that existed in the area prior to 1967 when you acquired the property?

A Yes.

THE COURT: In a general way. You didn't make any intimate study, did you?

THE WITNESS: No, sir.

THE COURT: You had a day's work to do and you occupied those premises like all of us and when you got through with your day's work you lived there but insofar as making a detailed study you did not do anything like that, did you?

THE WITNESS: No, sir.

THE COURT: You did not belong to any social organizations in the neighborhood which would enable you to have recognized ordinary intimate contact or knowledge of the problems that existed in the neighborhood?

THE WITNESS: Not at that time.

THE COURT: Very well.

Q Will you tell us what your observations were of the area during the period that you lived in 96th Street?

A At first it was a poor area. As I said, on 92nd Street, when I first moved into the area, there was --

Q No, I am talking about 96th Street. You said you lived on 96th Street?

A 96th Street, two blocks away.

Q Yes, go ahead.

A It's a crosstown street with the busses there and

it is a pretty good street.

Q Between what avenues was it?

A Columbus and Amsterdam.

Q Would you describe the conditions in that area where you lived and you resided during the period prior to the time you moved into 94th Street in or about 1967?

A It was a safe area. It was good.

Q Describe the area?

A Well, it had been rehabilitated, they put up one now entirely new building that took up most of the block, they were building across the street. It was a good area.

Q Did you have occasion to observe the area prior to the time that this activity under the west side Urban Renewal plan tookplace?

A Yes. There were many tenements on the south side.

Q Many what?

A Tenement buildings on the south side of 96th Street and they were torn down.

Q Tell us what the nature of the area was with respect to the type of people that lived in there and the situation with respect to crime and all of those other elements at that time.

A Well, I only know from hearsay information, if that

is all right. I don't know.

I knew it was rough. When I was offered an apartment on 96th Street I turned it down at first and then I spoke to my wife because it was large and it was inexpensive and we needed a larger place, and I went into the area and I started to investigate it and I went -- I spoke to a number of people on the street, I went into the druggist and he told me that the --

MR.LEVY: Your Honor, I would object.

THE COURT: Objection sustained.

Q Will you tell us when you made your decision to go into 94th Street, what was the situation with respect to the area at that time, in 1967?

A It was a very hopeful area. It seemed like the healthiest area in the city because it was going to be an integrated area economically and racially, and it was promising and it was the kind of area I wanted to live in.

Q Did you have conversations with any of the government people and the people who were involved in the redevelopment of the area before you made your decision to buy into the area?

A Yes, I had conversations.

THE COURT: The answer is yes.

Next question.

Q And will you tell us who those conversations were with and what was the substance of them?

A Well, William Hunter and --

Q Who?

A William Hunter.

Q Who is William Hunter?

A He was head of the, I think the Local Office 69 Urban Renewal on 88th Street, the field office.

Q And when did you have your conversations with him?

MR. GOLD: Your Honor, excuse me. I am going to object to this line of questioning. I think, No. 1, it violates the parole evidence rule. All those conversations and representations are mentioned clearly in the contract between the city and Mr. Karlan.

THE COURT: What do you say, Mr. Morris?

MR.MORRIS: I say they are not. I say the essence of the issue on the contract question that is involved in this proceeding is the representations that were made to Mr. Karlan at the time he entered into the contract.

THE COURT: I will receive it subject to a motion to strike.

There is no mystery about this. The Judge has been

very frank in saying that he has got to grope his way and in groping your way you have to later on, after you become somewhat familiar, cut down some of the trees that were obstructing the ease of operation and that is exactly what I intend to do.

So please go forward. A motion to strike will be in order and we will deal with it at that time.

MR. MORRIS: May we have the question read?

THE COURT: You remember it?

MR. MORRIS: Yes.

Q Didyou have conversations with Mr. -- what was his name?

THE COURT: Hunter.

Q Did you have conversations with Mr. Hunter?

A Yes, I did.

Q And when did those conversations occur?

A When I applied for a house -- when I --

THE COURT: No, that calls for a date.

A Excuse me. When they --

THE COURT: Look, the Judge says that calls for a date. Don't argue with the Judge, Mr. Karlan.

THE WITNESS: No.

THE COURT: Give me a date.

THE WITNESS: 1967.

A Yes.

Q And approximately how many times would you say you conferred with Mr. Hunter, roughly?

A Ten.

Q Ten times?

And what were the nature of your conversations with him? Did you discuss the questionof the West Side Urban Renewal area and the project you were contemplating buying?

A During some of those conversations, yes.

Q Tell us what the conversations were with respect to that issue?

A Well, I was told that --

MR. LAND: Objection, your Honr; hearsay.

THE COURT: I will receive it subject to a motion to strike. Let us see the value of it and we will put it in its right perspective.

Proceed.

A I was encouraged to buy a house in the Urban Renewal because they said that it would -- they had a booklet what they gave me which described the renewal with what would be luxury housing, what would be middle housing, what would be integrated housing and what would be low income and they said that it was on the way up and I could see it, I agreed,

there wasn't any question in my mind that I wanted to go there because of the description of the booklet.

Q And did you make your own personal observations which confirmed what they told you?

THE COURT: No, that is leading. The Court objects to that.

Q Did you make other observations which caused you to come to the conclusion that you did?

A Yes, I could see the area was improving, I could see what kind of block it was, I was told about certain people that were on it, I knew it was an integrated block as far as the brownstone owners and there was a closeness there and everything worked very well, as it still does.

Q Did you have conversations with any other government people?

A I had conversations --

THE COURT: Mr. Witness, did you have conversations with any other government people? Yes or no?

THE WITNESS: Yes.

THE COURT: Next question.

Q You did?

A Yes, I did.

Q With whom?

A Mr. Joseph Lauria.

Q What was his role?

A He was in charge of the financing, helping us get through the whole problem of renovating a building. He was at the field office, also, on 88th Street.

Q And on approximately how many occasions did you discuss the situation with him, roughly?

A 30 or 40 or 50, maybe.

Q 40 or 50 times?

A Yes.

Q And did you discuss also the question of the Urban Renewal plan and what was required with respect to it?

A Yes.

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Q You did?

A Yes.

Q And did you explore that fully with him?

A Yes, I did.

Q And as a result of those conversations and your own observations, did you come to a conclusion with respect to whether or not to buy into the West Side Urban Renewal area?

A Yes, I did.

Q And what did you do?

A I bought a home from the City and I renovated it.

Q Tell us, first of all, what did you pay for the home and what did you do with respect to renovation and so forth?

MR. LEVY: Objection as to relevancy, your Honor.

THE COURT: Yes, Mr. Morris, I should think that is objectionable. What difference does it make what he paid for the home?

MR. MORRIS: I thought the extent of the investment made by these people might be germane to the Court's determination of the significance of what they were undertaking to do.

THE COURT: I will receive it in a very general way, but no detail. Let us have an overall --

Q Just give us the price of the cost of renovation.

A I bought the house for $25,000. I put $35,000 cash into it. I had a mortgage for $13,800. I completely gutted the building, made a duplex apartment for myself and then apartments above me for rental.

Q And when was that done?

A It was completed in 1969.

Q Completed in 1969?

A Yes, sir.

Q And then after you made that renovation, what occurred? Did you move into the property yourself?

A Yes, I did.

Q And have you lived there ever since?

A Yes, I have.

Q And you moved there from 96th Street?

A Yes.

Q So that you have lived in the West Side Urban Renewal area right through the latter part of the '50's through the decade of the '60's up to the present time?

A From the '60's?

MR. LEVY: Objection as to leading. That is not the testimony.

MR. MORRIS: I am just summarizing.

MR. LEVY: That is what I am objecting to.

THE COURT: Will you wait just a moment?

It is a recapitulation of what the witness has testified to and there is no harm in it, and if I disagree in my own thinking, I am not bound by it.

Objection overruled.

A I have lived in the area for twelve years.

THE COURT: Next question.

Q And do you live there now?

A Yes, I do.

Q After you moved into your renovated brownstone at 94th Street, would you describe what has happened to the area since that time?

MR. LAND: Objection, your Honor. The definition of the term, "area," what is he talking about?

THE COURT: Objection sustained.

MR. MORRIS: I am talking about the West Side Urban Renewal area.

THE COURT: All right.

Do you understand the question?

THE WITNESS: I think so, yes.

THE COURT: All right.

A At first there was a tremendous amount of activity. Brownstoners were buying --

MR. LAND: Objection. There is no testimony

that the witness even knows what the West Side Urban Renewal area is or what it is bounded by.

THE COURT: Will you define what you understand to be the area involved there?

THE WITNESS: Yes. On the south from 87th Street to 97th Street on the north, from Central Park West to Amsterdam Avenue.

THE COURT: All right. Now proceed with your answer.

A When I moved there, there was a great deal of activity, people were very optimostic, people were very happy. People were buying brownstones and renovating; people were moving into the middle-income buildings on my street. There were four of them on the corner of 94th Street and Columbus Avenue, and they really are a pleasure to see. It's black and white middle-income people living there, and then this public housing, as I understand, thirty per cent. Nobody knows who these people are, because there is a very good racial mix throughout the building.

There never was any problems that I was aware of on the street until this summer, when things started to get rough.

THE COURT: What do you mean by that, "things started to get rough"? I want facts.

THE WITNESS: Well, I was coming out of the building and I had -- there were a bunch of boys across the street, and I had seen them hanging around for a month or two, boys that I didn't recognize before, and I was coming out of the door and somebody said, "Leave that door open, my car is down there," and I know I was not supposed to leave it open. I shut it immediately, of course. A bottle was thrown at me and missed me by --

Q A what was thrown at you?

A A bottle was thrown at me and it just missed me, but splattered back, and I was really shaken and I went away fast, and I went to a friend of mine, who is Mr. Hudgins' son, who Mr. Hudgins will be here this afternoon.

For example, we have a beautiful park in the area with trees. There were a number of boys there who I did not recognize. They were fooling around with copings around the trees, and I asked them to please not do that. I said little children could be hurt and it would harm the beauty of it, and I was told to beat it fast and, unfortunately, I was on my way to business and I didn't get a chance to call the police, but when I came back two of the copings were missing.

It was disintegration of something that I really felt was beautiful in the area.

Q Was it being destroyed?

A It is being destroyed.

Q Now, would you describe the nature of the people whom you encountered in connection with that incident? Tell us a little bout it; what they looked like, what their appearance was.

MR. LEVY: Your Honor, the incident is on the record. I don't think it is particularly relevant to the issue on trial here today. I don't think further testimony elaborating on it is going to serve any purpose.

MR. MORRIS: Your Honor, I think it is very relevant to the proceeding that we have before the Court and the issues for determination.

THE COURT: I will receive it and weigh it and see whether it belongs after I hear it.

Go on. Answer the question.

Objection overruled.

A Well, they were boys that I didn't recognize, I would say teenagers, and I hate to say it, but they were black.

Q Tell us how they looked. Were they well dressed or did they seem --

A Yes, fairly well dressed. The bottle that night, I couldn't see how they were dressed, but during the daytime

they were nicely dressed.

Q Had you seen these same boys or these same people on other occasions?

A I was nto familiar with them.

Q I mean, boys of that type or that nature?

A Yes, very fine boys, just like that.

MR. LAND: Objection, your Honor.

THE COURT: Yes. "Boys of that type or nature," I don't know what that really means.

Objection sustained.

Next question.

Q Were there any other incidents or would you tell us what else you have observed about the neighborhood during the period subsequent to the time you moved into the neighborhood in 1969?

A Well, I was robbed last summer.

Across the street there had been five robberies in the brownstones.

MR. LAND: Objection, your Honor.

THE COURT: Sustained.

Q Tell us about the time you were robbed.

THE COURT: When and where?

THE WITNESS: It was last summer, the week after Labor Day, and we went away for the week and, and I got a

call from somebody who works for me, and he said that the apartment had been broken into.

Q That was your apartment was burglarized?

A Yes.

Q And can you fix about the time that that occurred?

A Well, sometime at night. I left the apartment about 9:00 o'clock, the person who works for me came in about 9:00 o'clock, and it happened in between.

Q Was something taken at that time?

A Yes, a television set.

Q A television set was taken?

A Yes.

Q Did you observe any other elements of crime in the area or an increase in crime in the area?

A One of my tenants had her purse snatched on Central Park West --

MR. LAND: Excuse me. Could you repeat the answer to that question?

THE WITNESS: One of my tenants had her purse --

MR. LAND: I object to the answer, your Honor. It is hearsay.

THE COURT: Objection sustained.

Strike it.

MR. MORRIS: Your Honor, I don't think it is

hearsay to testify as to what occurred with respect to another tenant. He is not testifying to what they said to him.

MR. LAND: Unless this individual was there at the time of the incident, there is no knowledge.

Q How do you know that this tenant was attacked and was robbed?

A She came to me; she was crying.

Q And she told you that she was attacked?

MR. LAND: That is hearsay, your Honor.

THE COURT: That is distinctly hearsay, Mr. Morris.

Objection sustained.

Q What other information do you have with respect to the situation in the neighborhood subsequent to the time that you moved in? Describe further what has occurred with respect to the neighborhood.

THE WITNESS: I'm a little confused, your Honor. What is hearsay? Neighbors telling me things --

Q Mr. Karlan, will you please just listen to my questions and respond, and it is for the Court and for counsel to worry about the admissibility of your answers. You must answer the question and tell us, as best you can, what the situation was with respect to my question.

Don't try to be a lawyer, please.

A Repeat the question, please, Mr. Morris.

Q Subsequent to the time that you moved into the premises in 1969, would you tell us what else occurred with respect to the neighborhood and the area?

A Well, physically there is --

Q Based on your observations.

A All right.

Physically, there is a tremendous amount of graphiti on beautiful new buildings.

There is a park on 94th Street between Central -- between Amsterdam Avenue, Gottesman Park, it is called. This was built as a theater, a basketball court, a place for little children to play. It has become -- they took the basketball court down. The building itself was contemplating putting a wire fence around the whole park so nobody could get in there.

MR. LVEY: Objection. This, too, is hearsay.

THE COURT: Sustained.

Strike that portion of it.

Wait a minute. You see, as a lay witness, you recognize that when you tell us things and you make concluding evaluations, that is not helpful to us. What you see with your own eyes, that is another proposition.

What did you see happen?

THE WITNESS: At Gottesman's Plaza on 94th Street, it was to me an absolutely beautiful conception, a theater for local people, for basketball, playground for younger children. It is virtually empty all the time. The basketball ring was taken down because there were -- well, there were --

THE COURT: Was taken down.

THE WITNESS: It was taken down.

THE COURT: Next?

THE WITNESS: I have seen graphiti all over the place.

THE COURT: Yes?

THE WITNESS: You don't want me to say what I heard. All right.

THE COURT: Is there anything else you wish to say as to what you saw?

THE WITNESS: No, but I can say as far as my own feelings, for the first time this year, I am afraid walking in the area and I was never afraid before.

THE COURT: All right.

Q Are you familiar with the attempt that is being made to convert Site 30 to low-income housing?

A Yes, I am.

Q And from your observations of the area, can you advise the Court as to what you think the effect of introducing more low-income families into the area as a result of that conversation would be?

MR. LAND: Objection, your Honor.

MR. LEVY: Objection.

THE COURT: On the ground that?

MR. LAND: The witness has not demonstrated any expertise to testify as to the matters asked of him.

THE COURT: Sustained.

Q Did you make any other observations with respect to the situation in the area and what was happening with the area subsequent to the time that you moved in in 1969?

THE COURT: Why do you keep saying 1969?

MR. MORRIS: He moved in in 1969.

THE COURT: He moved in in 1969 but he acquired it in 1967.

MR. MORRIS: Yes, he bought it in 1967.

THE COURT: All right.

Do you understand the question, Mr. Karlan? Do you understand the question, sir?

THE WITNESS: Yes. I'm just not sure I can answer it.

A I know that the fear that I have is very common

today. I know that I had to send my boy -- I always believed in public schools. My oldest son always went to public school, to Joan of Arc, the local school. My younger son went to Joan of Arc, and when I found out what he was subjected to, kids trying to rip him off, I pulled him out and sent him to a private school when it was against my convictions. Besides, I didn't have the money; I was trying to pay for my house. I want my children to go to the public schools.

MR. LAND: We wish to strike the testimony with respect to reflections of his children of which he does not have personal knowledge of what happened.

THE COURT: Objection sustained. We are constrained to and must strike that portion. It is not evidence that the law accepts.

THE WITNESS: All right.

A I will say this: I have watched every child who lives on my block in a brownstone now goes to a private school, black and white children, every single one of them, and that's an observation.

Q Goes to private schools?

A Goes to private schools.

Q Is that true of both of your children?

A No, sir, it was not true of both of my children.

Q Does one of them go to public school?

A One graduated all the way through from public school, and one, after junior high school, I put him in a private school.

Q Tell me when the one who graduated graduated.

A 1970, the older boy.

Q And the one who is in school now --

A He also -- my youngest son just graduated in June.

Q Would you tell us when you took him out of the public school in the neighborhood?

A Four years ago.

Q That would be 1969 or 1970?

A Right.

Q And he has gone to a private school since that time?

A With the exception of last year, where he went to school in an area in another state.

Q Were there any situations which developed during that period which affected your wife or other members of your family?

A Yes, sir.

MR. LAND: Repeat the question, please.

THE COURT: Yes, sir.

Repeat it, Mr. Court Reporter.

(Record read.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: Gentleman, we only have a few more minutes before we recess and I have got to leave from here and go to a meeting place out of the building, and so you will have to be patient with me. We will resume as close to 2:00 o'clock as I can possibly make it.

All right. Will you announce a recess until 2:00 o'clock, please, Mr. Clerk?

THE CLERK: The Court is recessed until 2:00 p.m.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

R O W L A N D N. K A R L A N, resumed.

THE COURT: I am sorry to have kept you waiting. I couldn't help it. Proceed.

MR. MORRIS: May Mr. Land and I approach the bench, your Honor?

THE COURT: Surely. All counsel, whenever you have a conference, principally trial counsel in charge, you will all be welcome.

(Discussion off the record at the bench.)

CONTINUED DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Karlan, in addition to the incidents you have testified to and told the Court about, are there any others which occurred during the period subsequent to 1969 when you took possession of your apartment that relate to what was happening in the West Side Urban Renewal area that you observed of your own knowledge and your own observation?

A Yes, sir.

Q Will you tell us what they were?

A Yes, a number of things.

One, I remember Continue, which --

THE COURT: I'm sorry, the acoustics are not good here and you rattled those words off and I don't think counsel can hear you because I hardly got it. Take your time.

A I am a member of Continue, which has been in opposition to much of which Strycker's Bay has been fighting for in the urban renewal, and at a Continue meeting several years ago, right in front of me, I saw Millard Prior, who was a brownstone owner, knocked down and get a bloody nose. Mr. Prior moved within a year or so after that.

MR. LEVY: Your Honor, I move to strike that testimony as not being connected in this case. It is scandalous.

THE COURT: Motion is denied. It will remain in the record.

Next.

A I have seen a neighbor across the street, Mr. Galperin's house broken in, the wall broken in. I did not see the theft, I saw the wall broken in in his vestibule, and I saw it repaired and the trouble that went into it to repair it.

I saw across the street bars in the back windows in the Grossman's house that were broken and they were in

the process of repairing it when I got there.

I've seen my own architect, who never wanted bars, put bars on his window.

I remember on one occasion walking to St. Demetrius for a planning board meeting early in the spring, May or June, and I was appalled at some of the new sites with people sitting there looking like derelicts, drinking beer. It was frightening.

I have children come from 93rd Street around to 94th Street, my street, which is quite a safe block, to go to the store, and that's way out of their way.

I have seen -- one of the beautiful things of the urban renewal was that there was supposed to be a back mall behind the high risers and there were going to be stores there and people were going to be able to walk from one to the other. During the past year three of these have been closed up with fences because -- well, they have been closed up with fences so that you can't get into the malls.

I have seen on a number of buildings of late, the new high rise buildings, iron put on the -- they had gardens and they would have a cement wall to hold the dirt in, and people apparently, too many people -- well, I have seen iron put there so that people can't sit there any

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more.

I have seen that type of thing go on in the urban renewal and it has discouraged me tremendously.

MR. MORRIS: That's all.

THE COURT: Cross-examine, Mr. Land?

MR. LAND: Mr. Gold will begin.

THE COURT: Fine. Any arrangement you have between yourselves is satisfactory with me.

MR. GOLD: I will start.

CROSS-EXAMINATION

BY MR. GOLD:

Q Mr. Karlan, would you say that the purchase of this brownstone by you on 94 Street in the West Side Urban Renewal area was one of the monumental purchases of your life?

A It was the monumental purchase of my life.

Q And I think you testified, sir, that you purchased this house in 1967, is that correct?

A I was appointed a sponsor and gave my first deposit. The closing is when you have completed renovation. That was in 1969, but my deposit for the house was 1967.

Q Mr. Karlan, I show you this affidavit, which is attached to the motion papers served by Damov & Morris on your behalf for intervention in this action, and this is

an affidavit stating your name.

Is this your signature?

A That is my signature.

Q Did you sign this affidavit?

A I signed it.

Q Annexed to that affidavit and referred to in the affidavit was an Exhibit B.

Is this the exhibit, sir?

A Yes.

It says May 22, 1968, but I gave the deposit --

Q No, no.

Is this the contract of sale between yourself and the City of New York?

A Yes, it appears to be.

Q Would you now tell the Court what the date of that contract is, sir?

A I can't read it. Can you?

Q If I tell you that the date of this contract was July 18, 1968, would that be the correct date that you signed this contract?

A That was the closing date, yes. I imagine so.

Q The date of your contract with the City?

A That's not my -- that's a contract with the City.

When did I put the $500 down?

Q I am asking you. This is your contract with the City that you annexed as Exhibit B to your affidavit, is that not correct?

A Yes.

Q And I ask you if the date, July 18, 1968, is the proper date of that contract?

A Well, I can't -- you can't tell me that this is an "8" here. I don't know.

Q You say you don't know whether that is the proper date, is that correct?

A No, I can't remember the exact date.

MR. GOLD: I would like to, if I may, draw the Court's attention to Paragraph 110 and read that paragraph from this contract into the record.

The paragraph states: "It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this contract which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying on any statement or representation not embodied in this contract made by the other. The purchaser has inspected the building standing on said premises and is thoroughly acquainted with its condition."

If I may, your Honor, I would like to move to

strike the testimony with relation to prior representations that Mr. Karlan testified to earlier with certain officials.

THE COURT: Denied.

MR. GOLD: I have no further questions.

THE COURT: Any further cross-examination?

MR. LEVY: Yes, your Honor.

CROSS-EXAMINATION

BY MR. LEVY:

Q Mr. Karlan, before we get into it, the piece of paper you have in front of you, is that relevant to your testimony here today?

A It was. I wanted to remember things that I had specifically seen, not that were hearsay, and I was --

Q In other words, they contained a list of items which you just testified to, is that correct?

A Yes.

Q When was this list made out?

A I made it out sitting in the courtroom just about approximately 2:00 o'clock.

Q Did you have any conversations with anyone between the adjournment of Court earlier this afternoon and the resumption of these proceedings?

A I had a lot of conversations, yes.

Q Anything pertaining to the issue on trial here?

A No.

To what?

Q To the issue before the Court right now.

THE COURT: Anything relating to this case.

A I was instructed by my lawyer at lunch not to give any evidence --

THE COURT: Wouldn't you be good enough -- look, I am sure you are well-meaning, but wouldn't you listen?

Was there anything said at the time between the recess and the time you resumed the trial, was there anything said by you to anybody with regard to this case?

THE WITNESS: Yes.

THE COURT: The answer is "yes." That's all there was to it. No one asked you what, and please don't volunteer.

Next question.

Q Mr. Karlan, you did sign that affidavit which Mr. Gold just --

THE COURT: He has already said so.

Q Did you read it before you signed it?

A I read it.

Q Were you familiar with its contents?

A Yes.

Q Wasn't the date of that contract 1968?

I show you the affidavit.

A Where is the date?

Q Date of contract, July 18, 1968.

A Okay, right.

Q That is a point of clarification. That is the date of the contract.

THE COURT: Counsel, be very careful. You have a record here. You show him an affidavit. That doesn't, by osmosis, record itself.

"I show you an affidavit, verified such-and-such a date, which is a part of the supporting papers in connection with this very proceeding. Is that the affidavit you signed?"

Make the record clearly show what affidavit you are talking about.

Q This is the affidavit you signed in support of your motion in this proceeding that was executed --

THE COURT: Is that right?

THE WITNESS: My closing papers he's talking about, right?

Q The contract you executed on the 12th of July.

A Yes.

Q I want to ask you a few questions about your testimony this morning.

When did you move into 96th Street, exact date or as near as possible to the exact date?

A October 1969.

Q I am talking about on 96th Street.

A Oh, 96th Street.

I believe it was March 1961.

Q Was that before, to your knowledge, the urban renewal project was on the West Side?

A No, I knew there was urban renewal.

THE COURT: Counsel, will you slow up? Your enunciation is poor. Go slowly. This is not a political meeting and I want to have it conducted like a legal proceeding.

MR. LEVY: I'm sorry, your Honor.

THE COURT: Make no mistake about it. These cases usually have the overtures of a lot of unwarranted heat. That belongs outside; not in here. We have a legal proceeding and you are an officer of the law.

Now, proceed quietly and effectively and slowly so I can understand what you are getting at.

Q Mr. Karlan, at the time you moved in, were there other families moving into the area, to your knowledge? I am talking about 1961.

A I know that others followed suit.

Q Moved in about that time?

A Yes.

Q Were they families of --

THE COURT: By shaking his head, Counsel, you are not getting it recorded.

THE WITNESS: Yes.

THE COURT: Next question.

Q Were they families of approximately your income level, professional standing?

THE COURT: If you know.

A I don't know.

THE COURT: Next question.

Q Were they white families?

A There were some, yes.

Q At the time you moved in in 1969, how old were your children?

A Ten and twelve, I believe.

Q And that would make them pre-school children when you moved in initially?

A Or nine and eleven, maybe.

Q In 1969?

A Yes.

Q When you --

A Pre-school, did you say?

Q Yes.

A No, they were not pre-school. They went to grade school.

Q When did they enter school, what year, the youngest one?

A In that neighborhood?

Q When did they enter school? That is the question.

A Fifteen years ago, the first one.

Q That would be 1958, is that correct?

A Approximately. '58 or '59, yes.

Q So when you moved to 96th Street in 1961 they were attending school?

A Yes.

Q Which schools did they attend?

A PS 75.

Q Where is that located?

A West End Avenue and 96th Street.

Q Did they then go out to a junior high school?

A Yes.

Q And which junior high school did they go to?

A Joan of Arc Junior High School, 95th Street between Amsterdam and Columbus.

Q At some point in time you took your children out of the public school?

A My youngest.

Q You mean you had --

THE COURT: Don't both of you talk at the same time. I can't understand you.

Wait until he gets through with his question.

And you wait until he gets through with the answer.

What is the pending question, Mr. Reporter, please?

MR. LEVY: I believe I can restate it.

THE COURT: Will you do that?

Q You had one or more children who went all the way through public school and graduated from Joan of Arc Junior High School?

A Yes.

Q And that was prior to 1969?

THE COURT: Will you answer, please, sir?

A Yes, sir.

Q And when did you make the decision to take your youngest child out of the public schools, what year?

A When he was graduating from -- four years ago, in May 1969; May 1969 or April, sometime around then.

Q You say the event that precipitated that decision was the graduation from junior high school?

A That was one of the events that precipitated it.

Q Let us get to this robbery incident you had on the corner.

THE COURT: I don't get it.

Q The incident that you described earlier this morning on the corner of 94th Street, I believe, and Columbus Avenue -- is that correct?

A My tenant?

THE COURT: Counsel, don't ignore the Judge. I want to hear and understand what you say; otherwise you are not going to continue your examination and I am going to insist that Mr.Douw take over.

I have given you this as a privilege. I am glad to have you, but you are not going to ignore what the Judge wants. I want to understand what you are saying.

MR. LEVY: I'm sorry, your HOnor. I will try to be more direct.

Q My question was: The incidents that you described this morning as occurrring on the corner of 94th and Columbus --

A I didn't. 94th Street and Central Park West.

Q 94th and Central Park West?

A Yes.

Q Is this where the bottle was thrown at you?

A Oh, no. No, that was towards Columbus Avenue, yes.

Q Was it on the corner of Columbus and 94th?

A It was about -- I estimate a hundred feet from the corner.

Q This area where the incident took place, was it a public area, was it an enclosure, private area, or what?

A Public area.

THE COURT: Mr. Witness, will you wait until he finishes his question?

THE WITNESS: Yes, sir.

THE COURT: Unless you want me to adjourn the proceeding insofar as you are concerned and bring you back tomorrow.

I have to decide this.

THE WITNESS: All right.

THE COURT: It's my responsibility, Mister. I regard it as serious. I don't want to be burdened with these unnecessary handicaps. You just wait until he is finished.

I don't know what your testimony is going to be. He is asking me to weigh your testimony. He wants to try to show that you are unreliable. He may succeed.

Go on.

Q This group, they were boys, you described them; is that correct?

A Yes.

Q Could you tell where they lived?

A No, I can't.

Q Could you tell whether they could be described as high income or low income?

A No, I can't.

Q Have you ever seen teenagers gathered in a group before that time?

A Yes, I have.

Q In this public plaza area?

A Yes, I have.

Q Prior to 1969?

A Yes, I have.

Q Have you ever seen graphiti in other areas of the city?

A Yes, I have.

Q Vandalism in public?

A Yes, I have.

MR. LEVY: I have no further questions.

THE COURT: Does anything occur to you. Mr. Land?

MR. LAND: Just a few minor questions.

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THE COURT: Surely.

CROSS-EXAMINATION

BY MR. LAND:

Q You testified that your current brownstone is a duplex, is that correct?

A Yes.

Q In which part of the bornstone is rented out to some other party?

A Yes.

Q Is it still rented out to some other party?

A Yes.

Q What is the rent you are now getting for that duplex?

MR. MORRIS: I will object to that, your Honor.

THE COURT: Overruled. It is proper cross-examination.

A It averages for studios, $200; for a one-bedroom apartment, $250.

Q Tell me what you rent out in your brownstone.

A Six -- five studios and one one-bedroom.

Q And for each studio you get an average of how much?

A Two hundred.

Q And for the one bedroom you get what?

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A Two fifty.

Q And they are fully rented right now?

A Yes.

Q You testified that you paid $25,000 to the City to purchase the property, is that correct?

A Yes.

Q And in addition you put in $35,000 to renovate the home, is that correct?

A Not in addition. I put in $35,000 cash and there was $115,800 mortgage.

Q How much mortgage?

A $115,300, and I put in approximately $35,000 in cash.

Q So you put in $113,800 plus $35,000. That would be your total capital investment in your home, and if my addition is correct, that is $148,800.

Does that sound about right?

A Yes.

Q Have you had your home recently appraised?

A No.

Q Have you had an offer to sell your home recently?

A No.

Q Were you aware that in 1968 there was a teacher's strike at the school which your child attended?

MR. MORRIS: I will object to that, your Honor.

THE COURT: Overruled.

Were you aware of that?

THE WITNESS: Yes.

Q Did that teachers' strike and any consequences arising from that strike bear upon your mind --

A Absolutely nothing.

THE COURT: Wait a minute. He didn't finish.

Q Did that teachers' strike and any consequences arising from that strike have any influence whatsoever on your choice to withdraw your child from that public school?

A No.

Q You testified that after you moved to your new home, at one time a bottle was thrown at you at Columbus Avenue and 94th Street.

A 94th Street between Columbus and Central Park West.

Q In your lifetime, has there ever been any instances where anyone has thrown a rock, bottle, or other object at you?

A Yes.

Q Was that within the West Side Ruban Renewal area?

A No.

Q Did you report this incident of bottle throwing to the police? The one you referred to in your direct testimony.

A No.

Q I believe you testified earlier that in 1969 the people in the neighborhood, to use your words, were "happy people"; is that correct?

A Yes.

Q That would include yourself?

A Yes.

Q You testified that at a meeting at Continue, your association, a Mr. Prior received a bloody nose; is that correct?

A Yes.

Q Who struck Mr. Prior?

A I saw it happen --

THE COURT: Who struck him?

THE WITNESS: I don't know the name of the person.

THE COURT: Next question.

Wait a minute. Next question.

Q Was that individual who struck Mr. Prior a member of Continue, if you know?

A No.

Q You are sure he was not a member of Continue?

A No, he was not.

Q How do you know that?

A I know many of the members of Continue, but I know what organization he belonged to. I had seen him many times.

Q Was he white or black?

A He was a Spaniard.

Q Do you consider Hispanic people white or black or Hispanic?

A Black.

MR. MORRIS: Objection, your Honor. I will let the answer stand.

Next question.

Q You testified that in your neighborhood you found people recently putting bars on their windows, including your architect's home and your neighbor's home, and that certain stores in the area were closed.

Have you seen in other areas of the City -- I'm sorry. Is there a question there?

A I don't remember testifying that stores were closed.

Q Perhaps I am wrong.

You said there were fences put around stores.

A No. Behind each high rise building there is, like, an alley, which was supposed to be nicer than an alley and you were supposed to be able to walk from one through to the other and there were going to be stores facing this alley.

Q As to the bars on the windows, do you know whether in other areas of the City home owners put bars on their windows?

A Yes, they are.

Q Do you regard that as a rather common occurrence for home owners in the City to put bars on their windows?

A I don't know.

Q In looking at homes, especially homes on the ground floor that are open to the street, is it your observation that most of the homes you see in the City do, in fact, have bars on the windows?

A On the ground floor?

Q Yes.

A Yes.

Q Do you know what the current ratio of black to white is in the West Side Urban Renewal area?

A No, I don't know.

Q Do you know what the ratio of black to white is in the upper East Side of New York City?

A I don't know.

Q Do you know what the ratio of blacks to whites is in all of New York City?

A I believe I read that there were a little over a million blacks in New York City. Now, I could be wrong. I'm not sure.

Q And about how many whites do you believe there are in New York City?

A Six million.

Q So we could just make that ratio comparison by dividing one by the other, one number by the other?

A Yes.

Q Do you know what the rate of crime is in the West Side Urban Renewal area, crime per capita, major crime per capita?

A I don't recall the exact figures. I had them.

THE COURT: Do you know?

THE WITNESS: I don't, sir.

Q Do you know what the rate of crime per capita is in all of New York City?

A I don't.

Q Do you know what it is in Greenwich Village?

A I don't.

Q Do you know what it is in any area of New York

City?

A I don't.

Q You testified earlier that you received a booklet from the City prior to the time you purchased your current home, is that correct?

A Yes.

Q Do you have a copy of that booklet in the Court with you?

A I don't know whether it's here. I gave it to my lawyers.

I do have a copy home. I didn't bring it with me.

Q Previously you identified your contract with the City of New York by which you purchased your home. That was the contract annexed to your affidavit, is that correct?

A Yes.

Q Do you now agree that that contract is dated July 1968?

A Yes.

Q Do you have any other written contracts with the City of New York in respect to your home?

A I don't know. My lawyer would know.

Q Did you read that 1968 written contract before

you signed it?

A Yes, I did.

Q Did you have legal counsel representing you?

A Yes, I did.

Q Did he explain to you what the terms and conditions of that contract meant?

A Yes.

Q I show you what I believe has previously been identified, though not marked in evidence, this 1968 contract, which is annexed to your attorney's papers in this action.

Is this that contract?

A Is it

Q Yes.

A Right.

Q You testified that you had, in fact, read the contract?

A Yes.

Q Did you read the Section 110 of the contract?

A I assume so.

Q 'Yes' or 'no'?

A Yes.

Q I again want to read to you Section 110 and ask you again if you have read this before, prior to the

time you signed the contract --

MR. MORRIS: Your Honor, I object to counsel reading the same section that was read to this witness by Mr. Gold. The witness testified that he did read it. It's in the exhibit which is before the Court. There is no reason for a rereading of that entire paragraph all over again.

THE COURT: You know what he is talking about, don't you?

THE WITNESS: Yes.

THE COURT: All right. What is your question?

Q This clause contains a phrase that it is understood and agreed that all understandings and agreement heretofore had between the parties hereto are merged in this contract which alone fully and completely expresses their agreement.

THE COURT: Yes. What is your question?

Q Did you read that phrase?

A Yes.

Q And that phrase was explained to you, what it means?

A I understand what it means without explanation.

Q All right.

Is it still your contention that representations,

oral representations made to you prior to the time you entered into this contract in some way govern your legal rights with respect to the City?

MR. MORRIS: Objection.

THE COURT: What do I want him for on that?

MR. LAND: Because I believe there has been testimony that he received oral representations which are different.

THE COURT: So. If he says, "Yes," is that binding on me? It is a point of law, unless you are asking it to attack his veracity; then I will allow it. But to get him to tell me whether it is binding, what do I care --

MR. LAND: I asked him did he feel it was binding.

THE COURT: You are interrupting the Judge. That is perilous.

MR. LAND: I think the point has been made. I don't think you have to go any further.

THE COURT: Of course.

MR. LAND: Thank you very much.

THE COURT: Is there anything else?

Any redirect, Mr. Morris?

MR. MORRIS: Yes, I have one or two questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You had a conversation with me at lunch today, did you not, Mr. Karlan?

A Yes.

Q And did I make some statements to you?

A Yes.

Q And would you tell the Court what those statements were?

A You told me to not discuss anything that is hearsay, only those things that I have objected to.

I asked you if I could write them down---

Q That you objected to? Only those things that what? I didn't hear that.

A Only those things that I have seen with my own eyes.

MR. LAND: Your Honor, we object to this questioning. We don't think this is relevant to the issues in this case and the prior matter with respect to the testimony by the witness with counsel has been taken care of between all the parties.

MR. MORRIS: I didn't raise it, one of the counsel did on cross-examination, and I want the Court to know what was said since counsel raised it. I didn't raise

and was in a position of authority to act for the City, we

it, he did.

THE COURT: May I have a chance to answer?

I have already had occasion to compliment counsel. One of the things that distresses me always is after I do that counsel then get irritated with one another and, before they know it, they are saying things, the import of which they do not really recognize.

There has been already a strong position taken that something took place between this witness and his counsel. I had already said up at the bench that that kind of episode can be brought out on cross or at any phase of the examination of a witness, and it can be argued that the Court should take that into consideration in weighing the testimony of the witness.

Counsel was not content with that. Counsel, nevertheless, when counsel undertook examination of the witness, brought out that there was a conversation between this witness and his attorney since we recessed for lunch. Of course, I am going to give Mr. Morris all the opportunity in the world, if he needs it, to show that what happened betwe n him and the witness should not in any way diminish the weight that the Court should assign to his testimony.

Go on, Mr. Morris.

I also met with an individual and his staff who

MR. LAND: The Government would stipulate to that fact, your Honor. There is nothing at all that should detract from his testimony with respect to his luncheon engagement with counsel.

THE COURT: Then it is up to Mr. Morris to decide whether he wants to accept the stipulation or whether he wants nevertheless to examine.

They stipulate that there was nothing untoward or any impact by you on the witness, that what you were trying to do was guide him with regard to what is evidence and what is not evidence.

Are you content with that stipulation?

MR. MORRIS: I am content with the stipulation of all counsel to that effect, but the only one that has spoken on it is Mr. Levy.

MR. LEVY: Your Honor, that is so agreed, and just to inform the Court, the import of my question, I saw the witness speaking with other people not his counsel, and that was just what I was trying to get at.

THECCOURT: Fine.

MR. GOLD: I agree as well, your Honor.

THE COURT: There you are, Mr. Morris.

MR. MORRIS: Thank you.

Q Mr. Karlan, was there a difference in the extent

of graphiti and vandalism which you observed in this area at the time you entered into your agreement with the City to go ahead with the rehabilitation of your property and the extent of graphiti and vandalism that exists there now and has existed for a year or so last past?

A Yes.

MR. LAND: Objection. The question is too broad. It must be narrowed so we can know what he is talking about, your Honor.

THE COURT: Yes, it is, and it is somewhat leading.

Objection is sustained as to form.

You may reframe your question.

Q You were examined by counsel on cross-examination as to whether you observed graphiti and vandalism in connection with the West Side Urban Renewal area, were you not?

A Yes.

Q As of what period were you talking when you said you observed graphiti and vandalism?

A Past year and a half.

Q What would you say was the situation with respect to graphiti and vandalism during the preceding period or, namely, 1967 and 1968 when you signed your contract with the City?

A I was not conscious of any.

We should really have had this and I presume

Q You were not conscious of any?

A No.

MR. LAND: Your Honor, on this point of graphiti, perhaps the Court, being a resident of the City, will take judicial notice that graphiti has become a problem for the entire City and it is phenomena that has cropped up only in recent years and it has not been a major problem back in 1968.

THE COURT: Assume you are right, so what should I do?

MR. LAND: Take judicial notice of his testimony and go on with another matter.

THE COURT: I will allow certain leeway on it.

Go on, Mr. Morris. Counsel is right that the Judge does not live in a vacuum. We travel, we see, we form our own estimates of what goes on. Our very lives are interwoven with what goes on in the City. It is our City, whether it is the Judge that is a resident or we are talking about someone who has never been inside a classroom, is abysmally ignorant, has all the deficiencies that too many human beings are saddled with. It is our City and we see these things.

And so I agree with counsel that, generally speaking, I do not have to have my nose rubbed into those things that

any observer is bound to note, especially in the light of my own disclosure to you with regard to my early life.

Let us go forward now.

Q Why didn't you report that incident to the police which you testified to on cross-examination?

MR. LAND: Which incident, please?

Q The incident --

THE COURT: The bottle throwing.

Q The bottle throwing incident.

THE COURT: Why? Just answer.

THE WITNESS: Why?

THE COURT: Yes.

THE WITNESS: I'm not certain why I didn't. I had a second thought. I remember telling my sister, she was visiting from --

THE COURT: You see, that is not evidence. Wait a minute. Wait a minute. I have got to strike that.

Mr. Court Reporter, record that I direct that his answer be stricken.

Now start anew.

THE WITNESS: Your Honor, I'm not certain that I didn't report it.

THE COURT: All right. Next question.

THE WITNESS: This is a recollection.

Q You have testified there are six million people in New York. Are you sure it is six million and not eight million?

A No, I know there are close to eight million.

THE COURT: I am not going to waste any time on that.

Go ahead. Asking him why and then bringing it out that it was a newspaper item and you want me to accept that type of testimony as though it were out of the mouth of a scientist who made a meticulous study, all of that kind of stuff makes no impression upon me at all, gentlemen.

What else?

MR. MORRIS: That's all.

THE COURT: Anything else from anybody?

Step down. You are excused.

(Witness excused.)

THE COURT: Next witness.

MR. MORRIS: May I have a moment to confer with my next witness?

THE COURT: Surely, I will give you a short recess.

(Recess.)

THE COURT: Mr. Morris, who do you have?

MR. MORRIS: Dr. Fine.

JEROME LOUIS FINE, being first duly sworn, testified as follows:

THE COURT: Dr. Fine, you were in court, I noticed, while the preceding witness was on the stand.

People do not understand generally that when they are in the courtroom there are certain rules of evidence that the law says the Judge must uphold. Emotions, indignation, dislike, all that kind of thing must be kept at bay and the Judge must address himself to facts and a witness should not be allowed to volunteer anything, he should answer just the questions put to him.

And so will you please bear that in mind so you don't add to my responsibilies.

THE WITNESS: To the best of my ability.

THE COURT: As a doctor you know what it means to ask questions and get answers. You don't want a long recital when you ask a simple question. Right?

THE WITNESS: Right.

THE COURT: Very well.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Dr. Fine, what is your occupation?

A I am a psychologist.

Q Are you a resident of the West Side Urban Renewal

Area?

A Yes.

Q And where do you practice your profession?

A On 79th Street and Broadway.

Q That is not in the West Side Urban Renewal area?

A No, it is not.

Q But you reside in the area, is that correct?

A Yes.

Q How long have you resided in the West Side Urban Renewal area?

A Since January of 1969.

Q And did you reside in the West Side of Manhattan prior to that time?

A Yes.

Q Where did you reside?

A I resided at 110 Riverside Drive for approximately four years, I resided on Riverside Drive and 157th Street for two years prior to that and for the remainder of my years I resided in Washington Heights.

Q Washington Heights?

A Yes.

Q Did you have occasion to investigate the situation with respect to the acquisition or purchase of a brownstone property in the West Side Urban Renewal area?

A Yes, I did.

Q And could you tell us approximately when you first got interested and became engaged in the process of acquiring that property?

A I'm not sure. I would say it was 1963 or 1964 that I first heard of the Urban Renewal area through somebody who was --

THE COURT: No, he didn't ask you that. He didn't ask you who it was through.

A I began to negotiate and purchase the house in the West Side Renewal area in 1965.

Q And did you proceed with the acquisition of a property in that area?

A Yes, in 1965.

Q And would you tell us where that property is located?

A It's located at 115 West 88th Street.

Q And what avenues is that between?

A Columbus Avenue and Amsterdam Avenue.

Q And is it on the north side of the street or the south side?

A On the north side of the street.

Q Would you describe the circumstances that occurred with respect to your acquisition of that property, your

investigations and the decisions you made with respect to it prior to the time you entered into the contract to buy it?

THE COURT: Let me have an idea of the nature of the structure, would you, Mr. Morris?

MR. MORRIS: Yes.

Q Would you describe for the Court what the building is at 79th Street that you presently own and rehabilitated?

A It's a four-story-18 foot wide brownstone.

Q How deep?

A 57 feet deep, the building. The property itself is 100 feet deep, plus an extension, three story extension.

Q Is there a backyard?

A There is a backyard.

Q And did you go in for an alteration of that property?

A We completely altered the property.

Q And would you tell us what the property was before you altered it with respect to apartments and so forth and then tell us what your alteration was and what the property is now?

A It was an SRO --

Q What does SRO mean?

A A single room occupancy house, Class B dwelling,

I believe. It was occupied maybe by 12 individuals and one couple in rather deplorable condition.

We gutted the whole building and we now house our family on three floors and we rent another floor and backyard of the house.

Q You rent those to other people, other tenants?

A One other family occupies the first floor and the backyard, yes.

Q And is the building as of now and has it been since you moved in, fully occupied?

A Since the renovation was completed it was fully occupied.

Q I meant since the renovation was completed.

A We were in before the renovation was completed and the rental part was not rented because it was not completely renovated.

Q It is fully occupied?

A Yes.

Q Can you tell us the extent of the investment you made in the property?

A Not exactly.

Q Give us an approximation.

A Approximately $175,000.

Q That includes the cost of acquisition and the

renovation?

A That is correct.

Q You did enter into a contract with the City --

A No, I did not.

Q Would you tell us what occurred with respect to your acquisition of the property?

A Yes. I purchased my building from a private owner.

Q And you did not purchase it from the City?

A No, I did not.

Q Did you make any arrangements or have any relationship with the City prior to the time you purchased the building as to the situation with respect to the neighborhood?

A I had innumerable meetings.

Q Would you tell us about those meetings. Tell us when they occurred, who you spoke to, the number of occasions and approximately what was said?

A From the time I first learned about the West Side Urban Renewal area --

Q Which was what year?

A Which was in '63, '64, I'm not quite sure.

I met with individuals at the regional HDA office, which was located on 77th Street and Columbus Avenue. I really am very poor on names. I could get the names of

the individuals I spoke to.

I spoke to individuals that were in charge of the office, in charge of the development that were located in that office, and individuals in charge of relocation. I spoke to several different individuals. I had several different meetings, lengthy meetings, both at the time prior to purchase and after purchase both about the area and about the renovation standards which the City had to approve of in terms of the house.

Q So that when you did buy the property from this private party, did you purchase it subject to certain restrictions and requirements involved in the Urban Renewal plan?

A Yes, I did.

Q And would you tell us what those were and how those were evidenced?

A To the best of my recollection, I had to submit plans to the City and the City had to approve my use of the property and the kinds of plans I had.

I'm under the impression that I had to be as a Class A dwelling or I had to renovate according to certain ways that I'm not really clear on, but I know I had to submit my plans to them and they had to pass on those plans before I was allowed to do any renovation.

Q And did you retain an architect to handle the preparation of these plans for you?

A I initially --

THE COURT: Did you?

THE WITNESS: Yes, I did. I'm sorry.

THE COURT: Just say yes.

Next question.

Q Did your architect handle the approvals required from the City agency under the terms of the Urban Renewal Plan?

A Yes, he did.

Q He took care of that?

A Yes.

Q Will you tell us the substance of the conversations you had with the City with respect to the existence of the Urban Renewal Plan as it governed the property you were acquiring?

MR. LAND: Your Honor, we object to this question because he has not identified the people.

THE COURT: Precisely, but I will take it and strike it if they do not develop that the person he spoke to was a person in authority.

You heard the ruling. I will take it. If it is not connected up by proving that the person had authority

several years, to my knowledge. We thought the name was

and was in a position of authority to act for the City, we will strike.

MR. MORRIS: Yes.

Q Dr. Fine, would you tell us to the best of your recollection who these people were that you had your conversations with?

I recognize you said you cannot remember the precise name of the people, but would you tell us where you met with them, what evidence you had of their authority to speak and what their job and purpose was in the conversation you had with them?

A I believe I met with a Mr. Hunter --

Q Hunter?

A Yes. I believe that was one of the gentlemen's names.

The meetings I am referring to took place in the HDA offices for the area on 88th Street, on the northeast corner of 88th Street and Columbus Avenue.

Q That was in the HDA office for the West Side Urban Renewal area?

A Yes.

The individuals I met with were represented to me as being the local individuals of the area for the implementation of the plan.

Q And could you tell us who it was that you met with

I also met with an individual and his staff who was in charge of the real estate and development and an office in the same office, the same complex of offices, and the staffs of both of those individuals.

Q So that these were people who represented themselves to you to be authorized to speak on behalf of the authorities which were operating the West Side Urban Renewal Project, is that correct?

MR. LAND: We object to his characterization, let us let the testimony stand.

THE COURT: Yes, that is summing it up, really, or arguing it.

At any rate, you went to to this official office?

THE WITNESS: Yes, sir.

THE COURT: What kind of insignia or legend or whatever was there on that place to indicate? Do you remember what it was called?

THE WITNESS: No, sir, I don't. It said West Side Urban Renewal Area on the front in sort of gold lettering.

THE COURT: And you went inside?

THE WITNESS: I went inside.

THE COURT: And you spoke to somebody?

THE WITNESS: Several people, yes, sir.

THE WITNESS: It was the spring. I can find out

THE COURT: You mean each one participated in the same conversation?

THE WITNESS: I had meetings in which there were three or four people present from the organization that I spoke to, I had some meetings at which only one person was present.

THE COURT: All right.

Do you remember what each one said as to his position there or what his authority was?

THE WITNESS: I was introduced to one as --

THE COURT: By whom?

THE COURT: The secretary and a real estate agent I had been working with brought me in and I was introduced to one individual and he was supposed to be in charge of that office, that is, that whole operation.

THE COURT: He was supposed to be isn't evidence.

THE WITNESS: You are asking me to testify --

THE COURT: I am afraid, Mr. Morris, we are going to spend a lot of time getting nowhere.

THE WITNESS: I remember --

THE COURT: Wait a minute. I am talking to Mr. Morris.

THE WITNESS: I'm sorry.

THE COURT: Wait a second.

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These people are not fools. These are decent people. They

We should really have had this and I presume that you hoped it would come out in some way, but there it is and you will have to bring him back any way in order to be able to get testimony as to who these people were.

Q Dr. Fine, can you get the names of the people? Do you have records indicating the names of the people you spoke to at the West Side Urban Renewal office?

A I don't know if I have records. I can get names.

Q Will you check that for me?

A Yes, sir.

Q Thank you.

Roughly, how many conversations did you have with these people in this West Side Urban Renewal office?

A I don't understand the question, sir. Was it before I purchased my brownstone or after?

Q Both.

A Several meetings, perhaps upwards of eight or ten, prior to the time I purchased my brownstone. In recent years, the last three years --

THE COURT: Mr. Morris, I am sorry to interrupt the witness, but I think that in the light of the extensiveness of his conversations, if it was one, two, it is all right. He speaks of many people. It might have been a clerk who had no authority to speak and yet had a job there.

assurance that that would not delay the demolition and

These days, you know, everybody has or sounds off as if they have authority. We all like to sound impressive. When you rub it all away you find there is nothing there, very often.

And so what we are going to do is take a lot of testimony and then leave it up in the air as to who said what. I am afraid you will have to call the witness back anyway if you insist on this phase of this from this witness.

THE WITNESS: Your Honor, may I address you, sir?

THE COURT: No, sir. I am talking to counsel.

I wonder whether or not it won't be the better part of wisdom to have the witness talk with you further, Mr. Morris, so that you can really develop the testimony that is absolutely imperative before we can see what was said. We have got to establish authority, unless counsel will concede it, and I doubt very much whether they will.

MR. MORRIS: I will ask counsel for the City to concede that there was an office on the site in the West Side Urban Renewal area which was put there for the purpose of discussing the situation with respect to the project and potential purchasers and lessees acquiring interest in the project and giving them information with respect to it.

MR. LAND: What was his office at that time?

Is that correct?

MR. GOLD: I can't possibly concede anything like that, your Honor, because I just don't know. I honestly don't know.

MR. MORRIS: Can we produce someone from the City that does know?

As a matter of fact, one of my witnesses was attached to the City at the time this incident occurred and I will produce the testimony through him, that there was such an office, that it was authorized to communicate information to people inquiring and it was there for that purpose.

THE COURT: Mr. Morris, don't you see what the trouble is? We are about to receive from this witness a line of testimony which would be subject to cross examination and a great deal of time would be spent and yet the extremely vital point that is imperative in order to receive that testimony is the authority that resided in the person who made such representations otherwise it is all going to be stricken.

Therefore, it takes further concentration by Dr. Fine, he will have to try to recapture who it was he spoke to, he may have to talk to his agent, he may have to talk to the salesman, he may have to talk to whoever

he had, his lawyer, his architect, to sort of bring it back to his mind who it was he spoke to. And so I am afraid this requires a little more care and attention by you and by the witness in order to develop it.

What do you think, Mr. Morris?

MR. MORRIS: I will be happy to do what your Honor suggests and recall Dr. Fine after we have done that and I will proceed at this point to a line of inquiry dealing with what he did as a result of those conversations.

THE COURT: That is all right. That is something else again.

Q You had certain conversations. What did you do as a result of those conversations?

A I purchased the brownstone I now own I mentioned and renovated it and moved to it with my family.

Q You moved in with your family?

A That is correct.

Q Have you lived there since that time?

A Yes, I have.

Q At the time you were considering purchasing the property and moving into the area, did you make any investigations of your own with respect to the situation in the area at that time and the conditions of the property in that area?

All right. Go on, Dr. Fine.

A Yes, I did.

O And what did that investigation on your part disclose?

MR. LAND: Objection, your Honor.

There is no evidence yet that the witness is competent to make such an investigation. He is a psychologist, not a building appraiser or a neighborhood appraiser or a sociologist. He is simply a citizen like anyone else.

MR. MORRIS: And I am asking for what he ascertained by his own observation.

THE COURT: Mr. Morris, you know, you never give me a chance. You always argue. Maybe I am going to rule in your favor. Give me a chance.

Objection overruled. I will take it for whatever it is worth depending on what he discloses. If it is a scientific matter that I don't think he knows the first thing about, I will just delete it, it won't carry any weight.

If, however, it is an observation that he was competent enough to make, I will receive it and give it such weight as I think it deserves.

Objection overruled.

Now, go ahead.

O Dr. Fine.

A I walked through the neighborhood with my wife and family, I saw changes taking place --

THE COURT: What? You are concluding when you say changes. What? What did you say?

THE WITNESS: May I continue, sir?

THE COURT: Yes, provided you continue to give me the information I want, otherwise you are off, you know, it doesn't mean anything.

THE WITNESS: I saw new houses being built, I saw other houses that looked to be in bad condition being ripped down with signs up indicating other new houses were going up. I spoke to individuals that were then living on the block that I was purchasing a house on and asked them what they felt about the neighborhood, and they told me that --

MR. LEVY: Objection, your HOnor.

THE COURT: Objection sustained.

THE WITNESS: Yes. I'm sorry.

THE COURT: What else?

THE WITNESS: In terms of that kind of investigation, that's what I did, your Honor.

THE COURT: Very well.

Q Did you, as a result of that investigation, come to a conclusion as to the desirability of purchasing

and living in this neighborhood?

A Yes, sir.

Q And you did proceed then to purchase and move into the neighborhood, is that right?

A Yes, sir.

Q Do you have any children, Doctor?

A I do.

Q How many children do you have?

A I have three children.

Q And could you give us their ages now?

A A boy of 10, a boy of 8, a girl of 3.

Q And --

A I am sorry, four. She was just 4.

Q Therefore, you did have children at the time you --

THE COURT: I wonder what weight a psychologist would give to that kind of testimony.

THE WITNESS: I'm not sure. I can't afford to charge myself, your Honor.

THE COURT: All right.

Q You, therefore, did have children or children in contemplation at the time you made the decision to buy into the area and move in, is that right?

A Yes.

Q Do you send your children to the public school

in the area?

A No, I do not.

Q Did you ever?

A No, I never.

Q Do you send them to a private school?

A I do.

Q And will you tell us why you send them to a private school, not a public school?

A I feel the quality of education in the private school is on a higher order, more congenial to my thoughts about education than that of a public school.

THE COURT: Next question.

Q Are you connected in any way with the group called Continue?

A I am.

Q Now, will you tell us what Continue is? First of all, would you inform the Court of what the letters Continue stand for.

A Committee of Neighborhoods To Insure A Normal Urban Environment.

Q And do you have any connection with that group?

A I do.

Q And what is that connection with that group?

A I am chairman of the group.

Q And is that the group which seeks to become an intervenor in this case?

A It is.

Q Would you tell us what the purposes are of that group and what functions it performs?

A The primary purpose of the organization is to attempt to see that the Urban Renewal Plan as originally written is completed within the same framework and philosophy as at the time it was written and began to be implemented. In order to achieve that purpose we speak to individuals who may have a say in that matter. I am speaking about housing people on federal, state and local level, I am speaking about legislators and other individuals in city, federal and state governments.

We also attempt to informa individuals within the West Side Urban Renewal area of news of what is happening within the area.

Q Who are the members of Continus?

A Well, Continue has a large membership and it's composed of --

Q How many people?

A It is difficult to say. At last count we had a thousand families, approximately.

We have not collected formal dues for almost two years now and that is the only way I can really tell you how many people belong, by how many people pay dues. So at that point we had approximately a thousand families, which would mean, most people are married there, approximately two thousand or so adults.

They are composed of people who live in the area, either individuals who own and live, or just own brownstones, individuals who own and live in cooperatives, individuals who rent apartments in high rise and brownstones in the area.

THE COURT: But all are within the area that we are concerned with in this lawsuit?

THE WITNESS: With the exception of perhaps one or two individual honorary members, yes.

Q Are some of the members of Continue people who are in the pilot project area and have brownstones there?

A Yes.

Q And are some of them owners of cooperative apartments in the area?

A Yes.

Q Is that correct?

A Yes.

Q And some of them are lessees in the area?

A Yes.

Q Is that correct?

A Correct.

Q Will you tell us when Continue was formed and what its activities have been since the time of its formation?

A Continue was formed in the spring of 1970. It was a group of individuals that got together initially from some block associations within the West Side Urban Renewal area who were attempting to find out what the status of the area was after a group of individuals that were known then as the squatters came to take apartments of their own volition, as far as we know, of the City-owned buildings that were scheduled for demolition.

Some block associations, my own, which was the 88th Street Block Association, had attempted to ascertain what the history and what purpose and what the City was about to do in the situation, were unable to, so we circulated among other block associations a petition, had a meeting shortly after that and formed an organization called Continue, which was a name that had been active previously in the West Side Urban Renewal area, but had not been active for at least

several years, to my knowledge. We thought the name was particularly appropriate, so we used it.

As we formed our group, we tried to get information about what plans the City had for the area and have continued in that capacity, as well as trying to effect our point of view on the City and the State and Federal Government since then.

Q And did Continue actually participate in conversations and discussions with responsible officials of the Government responsible for activities in the West Side Urban Renewal area?

MR. LEVY: Objection, your Honor. That calls for a conclusion by the witness.

THE COURT: No. There is something in what you say, but in a general way, based on your own participation on behalf of Continue, can you answer the question?

THE WITNESS: Yes, sir.

THE COURT: What do you say?

THE WITNESS: We did.

THE COURT: All right. Next question.

Q And when did those conversations first take place?

A They began in the spring of 1970.

Q In the spring of 1970?

A Late spring of 1970.

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Q And could you tell us who it was that you met with and what the subject matter of your discussion was in the spring of 1970?

A Initially, we met with Mr. Blumenthal, who was and is a representative of our area.

Q He is the assemblyman?

A That's correct.

We met with State Senator Ohrenstein, state senator from our area, and we met with Councilman Weiss, and we met with Percy Sutton, Borough President of Manhattan, initially.

Q Will you tell us when that meeting occurred and what the conversation was?

THE COURT: Are we to understand that this was a joint meeting in which these gentlemen participated at the same time?

THE WITNESS: One meeting, it was a joint meeting. It took place in the home of Dr. Arthur Logan at 121 West 88th Street in the evening.

THE COURT: And were all these personages that you mentioned, were they there?

THE WITNESS: Councilman Weiss may not have been there; the others were.

THE COURT: You don't remember the date?

THE WITNESS: It was the spring. I can find out the exact date.

THE COURT: The spring of what year?

THE WITNESS: 1970.

Q The spring of 1970?

A Yes, sir.

Q And will you tell us the substance of what went on at that meeting?

A In the meeting itself we were concerned about what the City planned to do about the property in the area, what its plans were for the squatter group that came in.

Q What occurred with respect to the squatters' situation that you have referred to a couple of times?

A The squatters were a group of families who -- I am trying to find words that aren't biased in this.

MR. LAND: Your Honor, unless the witness can testify from direct knowledge as to the squatters, I move to strike this testimony.

THE WITNESS: I can.

THE COURT: Dr. Fine, you have the intelligence to know that when a lawyer addresses the Judge, it is not the witness' province to interfere. Don't do it.

THE WITNESS: Yes, sir.

THE COURT: I want to see what he has to say.

These people are not fools. These are decent people. They are trying to do their job and they are not fooling around here. There is something to what they say. I have got to understand it and I have to make rulings.

Dr. Fine, unless you can tell me, if not the exact words, the substance of what took place at that particular meeting, let us forget it.

Can you tell us the substance of what was said and who said what?

THE WITNESS: Yes, sir.

THE COURT: Very well.

Did you speak on behalf of Continue?

THE WITNESS: Yes, sir.

THE COURT: What, if anything, did you say? What was the essence of what you said on that occasion?

THE WITNESS: I said Continue was concerned that the character of the neighborhood would change if the City would allow the original, or the figures that were being used for the area at that time to be changed so that a higher loading of low-income families would be brought into the area.

THE COURT: All right.

THE WITNESS: I also indicated that I was concerned that the City was allowing individuals to occupy City-owned buildings scheduled for demolition, and I wanted

assurance that that would not delay the demolition and construction of new housing scheduled for those sites.

THE COURT: All right. What else do you recall presenting to these gentlemen on that occasion?

THE WITNESS: That was the substance of what I presented.

THE COURT: All right. What was the response, as you remember it, if any, and by whom?

THE WITNESS: The response primarily --

THE COURT: On that occasion.

THE WITNESS: Yes.

The response primarily was that it was fait accompli and we could lump it.

THE COURT: You could what?

THE WITNESS: We could lump it.

MR. LAND: Response from whom?

THE COURT: Yes.

THE WITNESS: The response was from Blumenthal essentially, with no disclaimer from the other gentlemen present.

MR. LAND: I would like one clarification.

Was Mr. Blumenthal -- that is the current candidate for Mayor of the City?

THE WITNESS: That's correct.

MR. LAND: What was his office at that time?

THE WITNESS: He was assemblyman for our district.

MR. LAND: To the New York State Assembly?

THE WITNESS: That's correct.

MR. LAND: Thank you.

THE COURT: Very well.

Is there anything else, Mr. Morris?

MR. MORRIS: Oh, yes.

Q Were there other meetings following the one you just testified to?

A There were a large number of continuous meetings with individuals. Some took place --

THE COURT: You see, now you are giving me details. He asked you a simple question.

THE WITNESS: Yes.

THE COURT: Next question.

Q Will you tell us what the next meeting was that occurred after that, to the best of your recollection?

A The next meeting I recall occurred at the offices of HDA.

Q Where was that located?

A Downtown.

Q 100 Gold Street?

A 100 Gold Street, that's correct.

And it involved Mr. Hazen, who I believe was then director of development; it involved -- he was the primary individual running the meeting.

Q Did he have staff members with him at the meeting?

A Yes, he did.

MR. LAND: Your Honor, that question, "staff members," is so leading -- who in the world is a staff member?

THE COURT: Objection sustained.

Are you going to oppose that there was such a person whom he named?

In other words, you haven't a jury here. I don't want to go scouting around and spending time. Was there such a person? Didn't he have authority? Do I have to have this pulled out?

MR. GOLD: There was, your Honor, a Commissioner Hazen.

Is that the name you are referring to now?

THE WITNESS: Yes, I am.

MR. GOLD: He was Commissioner of Development. The exact area of his authority, of course, I couldn't represent to the Court, but there was such a deputy commissioner at HDA at one point.

THE COURT: Thank you, Mr. Gold.

All right. Go on, Dr. Fine.

Q Can you tell us what occurred at that meeting? Who was present from Continue, do you recall?

A I believe Roberta Gratz was there -- in addition to myself Roberta Gratz was there; I believe that Lisa Liebert was there.

THE COURT: Who is he? I don't know these people.

THE WITNESS: They are members of Continue. He asked me whom from our group.

THE COURT: Yes, just say so.

Who else was there from Continue that you recall?

THE WITNESS: Dr. Arthur Logan. I am not sure. I believe Rowly Karlan.

Q Who?

A Mr. Karlan.

THE COURT: The preceding witness?

THE WITNESS: Yes, sir.

Q Will you tell us what occurred at that meeting, what was said?

THE COURT: Were you the spokesman, Dr. Fine?

THE WITNESS: I was one of the spokesmen.

THE COURT: What did you say?

THE WITNESS: I indicated the same thing that I mentioned a moment ago, that we were --

Q Tell us what it was.

A That we were still concerned that the City seemed to be changing the direction of the area by changing the ratio of low to middle-income individuals scheduled to go into the area by raising low-income and reducing middle, and that as far as we knew the City had still done nothing about the individuals known as the squatters who were still occupying the sites, and we were still concerned with what the City was going to do in both of those situations.

MR. LAND: Your Honor, again, there is testimony now about squatters occupying sites. There has been no testimony about that, and Mr. Fine has not said he had direct knowledge of squatters occupying sites, so we must move to strike that part of his testimony.

THE COURT: No, I am going to leave it. It doesn't establish the point, but it is testimony on that. It isn't effective testimony, but it doesn't warrant being stricken.

If he wants to embellish it and make it more solid, that is up to counsel.

MR. LAND: It doesn't establish proof of the squatters.

THE COURT: No, it doesn't.

Q Dr. Fine, are you familiar with the situation with

respect to squatters in the West Side Urban Renewal area?

A I am.

Q And would you tell us when that squatter situation first developed, when it first began?

THE COURT: When it first came to your notice.

Q When it first came to your notice, yes.

A The spring of 1970.

Q The spring of 1970?

THE COURT: What do you mean by that term? What does that mean, as you employ it? What do you mean?

THE WITNESS: I'm using the term that was applied by the newspapers of New York --

THE COURT: What do I care about that? What do you mean when you say that?

THE WITNESS: I mean individuals who moved into houses without the permission of the owners.

THE COURT: Thank you, sir. There it is.

Next question.

Q Can you tell us approximately the number of squatters that were involved at that time, in the spring of 1970?

A No, I cannot.

Q Well, was there one or more than one?

A There were more than one.

Q And would you say they were fairly substantial in number, or was it an insubstantial number?

A I considered them substantial.

Q You considered them substantial?

A Yes.

Q And would you tell us approximately how many buildings they were involved with?

A To my knowledge, approximately ten.

Q Ten buildings?

A Approximately.

Q All located in the West Side Urban Renewal area?

A The ones I knew of, yes, sir.

Q The ones yuu are testifying to are all in the West Side Urban Renewal area?

A Yes.

Q Can you tell us about your statement to Commissioner Hazen and to the other people that were present at that meeting, what response was made to the statement that you made at that meeting?

A Well, the City essentially indicated that it had no response to us. It heard us and came up essentially with no comment except they would keep it under consideration. What we had said they would put under consideration.

Q Did anything further occur at that meeting?

A Nothing that I recall that was of any importance.

THE COURT: All right.

Q Weretthere any other meetings subsequent to that time?

A There were some meetings held in September of 1970.

Q And will you tell us where those were held and who they were held with?

A They were held at 100 Gold Street, HDA headquarters. At one of the meetings, in addition to Mr. Hazen, there was Mr. Ollinger.

Q Just a moment. You mean Commissioner Ollinger of the HDA?

A I don't know what his title was at that point.

Q He was Commissioner of Redevelopment --

MR. GOLD: I object.

A You are asking me to --

THE COURT: Is there any mystery as to this person?

MR. GOLD: I will concede there was a David Ollinger who had the level of Deputy Commissioner. Exactly what the department or what authority he had I cannot say.

THE COURT: Thank you, Mr. Gold.

A There was also a Mr. Walsh.

Q Tell us who Mr. Walsh was.

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A As far as I knew, Mr. Walsh was in charge of HDA.

Q You mean he was the Housing Development Administrator?

A To my knowledge, yes.

MR. MORRIS: Does counsel concede that Albert A. Walsh was HDA Administrator?

MR. GOLD: Conceded.

Q Will you tell us who else was present at that meeting?

A Members of their staff, whose names I do not either know, or knew then or recall now.

Q And you were there, weren't you?

A I was there as one of the people from Cntinue and approximately the same people were there. There may have been one or two additions.

Q Were the same people present at that meeting from Continue who you testified were present at the prior meeting with Commissioner Hazen?

A To the best of my knowledge, yes.

Q Would you tell us what you said at the meeting to the City representatives?

A We asked for the meeting because we had in our possession a paper which was put out by or signed by Mr. Hazen indicating a number of major changes in the West Side

Urban Renewal Plan. The changes, essentially, were that several buildings were --

MR. LAND: Objection, your Honor. The best evidence would call for this particular paper.

THE COURT: Have you got that paper, Dr. Fine?

THE WITNESS: I probably have in my records, but I don't have it on my person, sir.

Q Do you recall what was included in that?

A Substantially.

MR. GOLD: Objection, your Honor.

THE COURT: Objection sustained.

Come up here, gentlemen, all of you, just leading counsel.

(Discussion off the record at the bench.)

THE COURT: Let us go back on the record.

Out of respect for counsel, I followed my usual bent of calling counsel up and making it quite clear the impression that the Court has obtained up to this moment and insisting that the evidence that is to be adduced must be meticulously presented and they can't depend on witnesses who do not have a present recollection. The witnesses must go through the process of searching their memory in order to be able to testify effectively and meaningfully and I don't want to go groping around and that I insist that thorough

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free to ask any questions as though they were on the stand

preparation be the hallmark of this as of every proceeding.

I will not give any weight to testimony that is not thoroughly presented and connected up. That is as the law demands and I cannot throw aside what the law makes as an essential.

Counsel recognize the value of the comments and I know I have their understanding.

We will go forward with this tomorrow. They are going to get together and talk about this matter, see if some result can be accomplished other than by putting on the armor. Everybody wants to put on armor and fight and then they find that the spear is not as sharp as they thought and that the sword is blunt and the hatchet has no effectiveness.

Speech making does not supply proof. There is no substitute for proof.

I have asked counsel to see whether or not some mutual ground can be arrived at, with the help of the Court, and if there is no chance of that, let us proceed and let us weigh the evidence for whatever it amounts to.

There is more that the Judge is concerned with than what meets the eye. Whether this took place or that took place or that little bit and that little chunk, I want to know how the Court can help resolve this conflict. Most

of the time we find that resolution of heated controversies are best accomplished by the Judge attempting to be a peacemaker. It takes much more out of the Judge to be a peacemaker than to sit and say, "Objection overruled," or "Motion denied."

I told counsel I am ready to extend myself. That has been what I concede to be a Judge's obligation. I am ready to do it. Talk among yourselves. If you get anywhere where I can help you, I will. If not, let us go forward and do battle.

We resume at 9:00 o'clock sharply tomorrow morning in this courtroom, unless counsel present something to me that will cause a different position.

I want counsel to know that I appreciate their earnestness and that if I am very blunt it is because that's the nature of the judge. That's what life has done with me. I don't play around. I level with people. I call it as I see it.

That's the score right now, gentlemen, and I am glad you are here because with your kind of zeal and earnestness, possibly we can work out an acceptable solution.

Will you, Mr. Clerk, announce an adjournment until tomorrow at 9:00 o'clock.

THE CLERK: Court is adjourned to tomorrow morning

at 9:00 a.m.

(Adjourrment taken to September 20, 1973, at 9:00 o'clock a. m.)

TRINITY EPISCOPAL SCHOOL CORP., et al.

vs. 71 Civ. 4315

GEORGE ROMNEY

September 20, 1973
9:00 a.m.

THE COURT: Are all counsel here?

Mr. Court Reporter, do you have the names of everyone who is here?

THE REPORTER: Yes.

THE COURT: I understand counsel wants to confer with the Court in chambers.

MR. SPECTOR: Yes, your Honor.

THE COURT: Very well. In a couple of minutes I will call you in.

(Recess.)

THE COURT: I think the record should disclose that for about a half an hour this morning, promptly beginning at 9:00 o'clock, I had the benefit of a conference with counsel, Mr. Spector for the petitioner, Mr. Land for the Government, Mr. Gold for the City, and Mr. Douw. I found the spirit displayed and the earnestness typical of what I have had occasion to compliment counsel on from the very outset. They are earnest, they are full of zeal, and they want to protect their respective clients to the full.

They differ, of course, in many important respects and we concluded the conference with the distinct understanding that there will be placed upon the record the essence, at least, of what was taken up at the conference. So won't you please proceed, gentlemen, in your own fashion, whoever wants to go first. I think it ought to be Mr. Spector, then Mr. Land, then Mr. Gold, and then Mr. Douw.

MR. SPECTOR: Thank you, your Honor.

I appreciate your remarks and in that spirit I will restate for the record the essence of what was stated by myself to your Honor in chambers and in the presence of counsel for all parties.

The plaintiffs ask your Honor at this time or state their intention at this time to request of your Honor permission to withdraw their motion for a preliminary injunction, the reason being as these hearings have developed it does appear that a full and complete hearing is required, or would be required in order for this Court to make a determination on that motion, and that complete hearing would require, it appears, quite a number of days of testimony and a rather in-depth trial or in the nature of a hearing.

Therefore, I have requested and I so now formally request that the plaintiffs be permitted to withdraw that

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motion and in its place request of your Honor, taking into consideration, your Honor, your Honor's busy schedule, the earliest possible trial date so that this matter may be fully tried on the merits.

We also request that in the interim your Honor consider our motion, the plaintiffs' motion, on behalf of certain parties to intervene in the action, and also the plaintiffs' motion to amend its complaint in accordance with their position as stated on the record yesterday.

Thank you, your Honor.

THE COURT: Mr. Land.

MR. LAND: I think Mr. Spector has fairly set forth the essence of our conference and I don't feel it is necessary to further elaborate on our conference. We will proceed, I understand, tomorrow at 9:00 o'clock for possibly four hours and the week after next, if the Court has the time available, we will proceed further on the matter. The Court will take under advisement the various motions that have been made.

Thank you, your Honor.

MR. GOLD: Your Honor, I have just a couple of remarks to add.

First, let the record show that at this point there is no stay or restraint against any of the defendants

in connection with the West Side Urban Renewal area and that I am not quite sure, your Honor, as to the response necessary for the motion to amend the complaint, which I think is now returnable on the 25th, and whether or not your Honor would want that response promptly or whether we can deal with that following the trial of the matter, perhaps.

Other than that, I agree with the spirit of the conference and the manner in which we are going to now move ahead.

THE COURT: Mr. Douw?

MR. DOUW: Your Honor, I have nothing to add. We are prepared to proceed tomorrow morning and as soon thereafter as possible.

Thank you.

MR. SPECTOR: May I, your Honor, add one further point, if I may, in reply?

THE COURT: Yes, surely, Mr. Spector.

MR. SPECTOR: Thank you.

As counsel for all parties have stated, I agree with the statements by our parties as made, with one addition, and I would just like the record to indicate that in my request for an early trial, it was not my intention or request to proceed with that trial tomorrow

morning. I understand that your Honor in chambers has so stated that we should proceed tomorrow morning, but I would like the record to be clear that I had wished for some additional time before this trial would commence, not any great length of time, but some time beyond tomorrow morning to commence the full-blast trial.

Thank you.

THE COURT: The condensation by counsel is a tribute to their desire to hit the main result, but it leaves undisclosed certain factors that I feel are essential and I shall now attempt to have the record as complete as I think it should be.

In the first place, I gather that Mr. Spector's remarks as to the degree of proof and the need for time for proof, whatever he had to say in support of his obligation to withdraw the application for a temporary injuection, he was talking about time for proof on the trial, over and above the proof that would have been essential for the application for a temporary ijunction.

Mr. Land and Mr. Gold and, of course, Mr. Douw joined in the views expressed by those two gentlemen, made it very clear to me that it is imperative that the case be resolved now. They mentioned that Judge Weinfeld had said the earliest time he could find in the light of

his heavy commitments would be the beginning of next year. They were not taken aback when I said to them that Judge Weinfeld had told me that at first blush he was inclined to regard the application for a temporary injunction as just being an initial step, but that the whole thing should be disposed of on the merits and that if he had the time, that's exactly what he would declare and in exactly that way would he proceed; in other words, that he would tackle the entire litigation and not just single out the application for a temporary injunction.

So, really, what it amounts to is this, that Counsel do not disagree that the case should be disposed of, that the interests of tenants, prospective tenants, poor, middle-class, well-to-do, all tenants, the City, the Government is pressured, and there should be a resolution of the merits of this litigation, and on that I'm satisfied.

Judge Weinfeld's initial reaction, which I have no hesitancy in saying is almost as good as what I would require in order to come to a final conclusion, his initial reaction was good and sound and solid. There is enough before me, and counsel agree, that this can't be played around with and put off; it's got to be met. And so the issue was, "Can you meet it, Judge Cooper? Have you got

the time? You understood to hear only the temporary injunction."

And so I responded as I now state that I will meet the issue, that because I am convinced it has got to be resolved as early as possible and because of my keen desire to not only meet this challenge because it demands judicial action promptly, but in order to lend a helping hand to my esteemed colleague, I would spare no effort, no time, I would exert myself to the extreme to do the best I can under the circumstances.

I repeat, I already have commitments. Next Monday I go to a criminal case. I think the defendant is in jail. But, at any rate, I committed myself to try his case. It is going to be short. I hope the jury will get it by next Wednesday.

Thursday and Friday are Jewish holidays, which we have to observe, so those two days we will not be able to hold Court. That throws us over to the week following, in other words, the week of October 1st. I said I would try to realign the matters already set for trial during that week so that I can give counsel further time on this case.

I pointed out, by assignment by the Chief Justice of the United States, I shall be sitting outside

of this state and holding Court in another district beginning with October 15th up to November 15th, and that as soon as I returned from that assignment, I returned to New York, I would then pick up this case as quickly as I can.

I already have cases scheduled for trial after November 15th. I will try to move them. It takes time to get in touch with counsel in other cases and ask them to disengage themselves. I don't like to do it, but I think the nature of this matter makes it imperative that I at least try. So that the exact dates are uncertain, but I will squeeze in whatever time I possibly can between now and the close of the year, and I hope to be able to dispose of this sometime between the return date of November 15th and the middle of the following month of December.

Counsel will just have to understand the Court, too, is hard pressed and I am putting them on notice that they will have to be ready on short notice to proceed one day and then go over maybe a couple of days and then come back again, all that sort of thing. I can't help it. I can't stretch the number of hours in the day, and counsel understand that and they have agreed and they have been gracious in their acceptance and their desire to cooperate

with the Court.

Mr. Land made a forceful argument that proof should be adduced today and that we should continue with that proof.

I recognize that Mr. Spector had a right to believe if he withdrew the temporary injunction, as he has moved to do, that it would not require that he be ready for proof today, and so he says he has no proof in the light of the position he has taken.

Let the record show that without any pride of authorship, the conference at the bench yesterday afternoon is what really precipitated what has happened this morning. It was an appeal by the Court to counsel to see if they could resolve this initial step, and in so doing I had to be open and frank, and that's the only way you can win over counsel. They took it to heart and they have accomplished something. Theirs was the burden, of course. I didn't participate in their conferences which have led to this announcement this morning by Mr. Spector. Theirs was the burden, the work, and they have done it and done it nobly.

Had I not called them up, we would have gone forward with proof today, a full day, until 5:00 o'clock, and tomorrow, as I announced initially, from 9:00 to 1:00.

The proof already adduced will be considered a part of the proof addressed to the trial. We are now at trial, make no mistake about it, and they understand it. It is only a question of giving time to complete the proof. That is the only thing that was left open.

I indicated to counsel, and I now repeat, that at tomorrow morning at 9:00 o'clock until 1:00 o'clock tomorrow, counsel for the plaintiff must come forward with proof. We will then go over to a date in the week of October 1st, provided I can somehow manage to find time during that week by getting other counsel in other matters to step aside.

Have I said anything that isn't in accord with your understanding, Mr. Spector?

MR. SPECTOR: Well, your Honor, I think your Honor has completely stated your Honor's position as we met in chambers, and accurately reflected that that was said.

THE COURT: That is all I asked.

Have I said anything that isn't in accord with what really took place, Mr. Land?

MR. LAND: No, your Honor.

THE COURT: What do you say, Mr. Gold?

MR. GOLD: No. Everything is consistent.

THE COURT: Mr. Douw?

MR. DOUW: No, your Honor.

THE COURT: There it is. Tomorrow morning, gentlemen, we resume at 9:00 o'clock and we continue to take proof, remembering that as of this moment we proceed to trial.

MR. SPECTOR: I appreciate your Honor's decision and, of course, must abide by your Honor's decision. However, for the record, your Honor, I want it to be clear that, as your Honor himself pointed out, the degree of proof required at a trial is greater, would be greater than the degree or proof at a hearing.

THE COURT: Of course.

MR. SPECTOR: Since your Honor has apparently ruled that the testimony already in will be considered as part of the trial record, when that proof was adduced it was adduced with the idea of its purpose on a preliminary injunction.

THE COURT: Precisely.

MR. SPECTOR: Therefore, I respectfully ask of your Honor, in the continuance of this trial, that plaintiffs, if they deem it appropriate, be permitted to recall those witnesses --

THE COURT: Of course.

MR. SPECTOR: -- and review or restate and be

free to ask any questions as though they were on the stand de novo.

THE COURT: No, I don't think we necessarily have to repeat that sort of thing, but if you find it necessary to emphasize or go over certain portions of their tetsimony, of course I shall allow it. All I am trying to say is I do not consider as wasted yesterday's proof and that we will apply the proof as I already indicated yesterday on the record, we will apply that proof as part of the proof in connection with the main action.

Even at that time I didn't know that there would be a withdrawal of the application for a temporary injunction and still I nevertheless ruled, and you all agreed, that whatever proof was adduced in connection with the application for a temporary injunction would be applicable with respect to the proof ultimately to be adduced at trial. That is all. That is a very common experience.

If you want to recall those witnesses, if you want to add, if you want to go over certain areas more completely than you have already, of course I shall allow that.

Does that satisfy you?

MR. SPECTOR: Thank you, your Honor.

THE COURT: Is there anything else you wish to

say, gentlemen?

MR. LAND: Nothing, your Honor. Thank you.

THE COURT: May I thank you again and tell you that with that kind of spirt, if you will only carry it on, if you will only recognize that the Judge is as earnest as you are, and if I would go on, as I am sure I am, that you are as earnest as I am, we will make progress.

Thank you, gentlemen.

Announce an adjournment, Mr. Clerk, until tomorrow morning promptly at 9:00 o'clock.

(Adjournment taken to September 21, 1973 at 9:00 o'clock a.m.)

TRINITY EPISCOPAL SCHOOL CORP., etc.
and
ROLAND N. KARIAN, etc.
vs. 71 Civ. 4315
GEORGE ROMNEY, etc.

New York, September 21, 1973;
9.00 o'clock a. m.

(Hearing resumed.)

- -

THE COURT: Note the hour, please, is 9 o'clock a.m.

Gentlemen, won't you please proceed.

MR. SPECTOR: Thank you.

- -

R O G E R S T A R R , called as a witness by the plaintiff, having first been duly sworn, was examined and testified as follows:

MR. LAND: Your Honor, just a brief comment.

The last witness was a Mr. Fine, I believe, and I don't believe his testimony on direct was concluded nor do I believe that any of the defendants' counsel had an opportunity to cross-examine.

THE COURT: You are absolutely right.

MR. LAND: So we assume that he will be called back by the plaintiffs' counsel at some further time.

Is that right, Mr. Spector?

MR. SPECTOR: We will endeavor to bring Mr. Fine back.

THE COURT: Of course, if he doesn't resume the stand and doesn't complete his testimony, a motion to strike his entire testimony would be appropriate.

Mr. Witness, this becomes necessary as a result of quite a bit of experience on my part, especially in proceedings of this nature. Witnesses become advocates. That is exactly what the law says the Judge must not allow to happen.

You are a sworn witness and you just answer the question that is put to you.

THE WITNESS: Yes, sir.

THE COURT: They are pretty competent. Strike out pretty, they are very competent people. They know their business. And if they don't want to ask a question they have something in mind that prompts them to take that course.

So please, yes, no, right and that's it, unless you are called for an explanation.

THE WITNESS: Yes, sir.

THE COURT: All right.

Please proceed.

DIRECT EXAMINATION

BY MR. SPECTOR:

Q Mr. Starr, where do you reside?

A 45 East 82nd Street in the City and County of New York.

Q How long have you resided there?

A 12 years.

Q Is that a private house?

A It is a cooperative apartment.

Q And you have an apartment in that co-op?

A Yes, sir.

Q Before you moved to East 82nd Street, No. 45, where did you reside?

A No. 1 Gracie Square in the City and County of New York.

Q And how long did you reside there?

A 12 years.

Q What business, occupation or vocation are you involved in?

A I'm executive director of the Citizens Housing and Planning Council of New York, Incorporated.

Q And would you tell the Court, please, what that Council does?

A The Citizens Housing and Planning Council was

incorporated in 1937. It is a voluntary group of citizens primarily from the City of New York who are deeply concerned with the housing conditions in New York City and how to use their best efforts to see that by vigorous and private action those housing conditions are improved.

Q Do you hold an office in that Council?

A I'm the executive director.

Q How long have you been executive director?

A Since 1958.

Q Have you been associated with that Council since its inception?

A No, sir.

Q When did you first become associated with it?

A I became a member and a member of the board of directors in 1952.

Q In connection with your duties first as a member of the board of directors and then as executive director, what personally were your duties and responsibilities?

A My responsibilities involved the analysis of proposals made either by public or private agencies looking to the construction of new housing within the City of New York, to replanning and reconstruction of blighted areas,

to the planning of recreational, industrial and other areas within the city, to the rehabilitation of older buildings within the City of New York and to advise with and consult with committees of the Council and outside experts so that the council's board of directors can formulate policy with regard to these changes when they involve public action.

Q In connection with your duties and responsibilities, have you had occasion to attend any public hearings or any other hearings conducted by any governmental agency?

A Yes, sir.

Q Would you describe what kind of hearings you have attended and the frequency?

A Well, I attend many, if not most, of the hearings held by the New York City Planning Commission, the Board of Estimate of the City of New York.

I testify before committees of the State Legislature and I have had many opportunities to testify before Congressional committees, particularly of the Banking and Currency Committee, in both the House and the Senate.

Q Thank you.

Would you describe your duties with the Council as occupying a major portion of your day?

A Yes, sir.

Q And has it occupied a major portion of your day over a period of years?

A Yes, sir.

Q Would you tell us for how long you have spent the major portion of your working day devoted to the work of the Planning Council?

A Since my election as executive director in the early autumn of 1958.

Q Would you tell the Court what other experience, if any, you have had in the general housing field?

A I hold by appointment by Mayor Lindsey the job of chairman of the Rent Guide Lines Board of the City of New York under which appointment I serve for a maximum of 15 days a year and with my board we set the allowable limits of rent increases under the Rent Stabilization Law.

I am a member of the board of directors of the National Housing Council of Washington, D.C. I am past member of the board of directors of the American Society of Planning Officials, a member of the National Association of Housing and Redevelopment Officials.

I have served by appointment by Mayor Lindsey, by Mayor Wagner, by the Commissioner seriatim of the New York State Division of Housing and Community Renewal

as a member of a number of Commissions and so-called Task Forces to bring in reports on various matters of housing policy.

Q Have you done any writing in the general field of housing?

THE COURT: Mr. Spector, the last answer is devoid of time. That can apply to last month. I don't know the period of time all these things took place and for how long a continuous period he was so engaged.

Q Mr. Starr, you have recited for us various efforts which you have been involved in in the housing field. Could you please tell us, specify in summary those fields and try to put a time when you were so associated or connected and for how long?

A I have served as a director of the National Housing Conference continuously since 1959.

THE COURT: Thank you. Next.

A I served as a member of the board of directors of the American Society of Planning Officials from 1967 to 1970.

I was appointed by Commissioner Gaynor to serve on the special committee with respect to the organization of the State Division of Housing from 1960 to 1961.

I was appointed by Mayor Lindsey to serve as

chairman of the Rent Guide Lines board when the board was established in the summer of 1968 and I am still so serving.

I have served as member of Special Task Forces appointed by City and State housing officials in 1963, again in 1968 and most recently in 1971 by appointment to the special so-called Little Hoover Commission established by Governor Rockefeller to report on housing condition and housing policy in the State of New York.

Q I asked you about writing and I believe you replied in the affirmative.

Would you tell the Court what writings in the general housing field you are responsible for and when you wrote those documents?

A In 1966 a book of mine was published by Coward McCann under the title "The Living End." It has since been reprinted by Penguin Books under the title "Urban Choices." It deals with problems of housing in the city.

Another book on housing was just accepted for publication by Basic Books, a division of Harper & Row, and will be published in the spring. It is on housing and the money market dealing with the financing aspects of housing.

I have written articles and housing questions for the Journal of Housing, for the Fordham Law Review, for The Public Interest, for Commentary Magazine, for Horizon Magazine, for the New York Times real estate section and for a number of other periodicals which escape my mind at the moment.

Q The last writings that you referred to, from the point of view of time, would you try your best to pinpoint when those writings occurred?

A My writings in the New York Times real estate section on Sundays have appeared over the past three years.

My writings for Commentary began in January of 1970 and have con tinued through the present time.

My writings in The Public Interest, which is a quarterly magazine, began in 1967 and continues through to the present time.

I had a writing which I neglected to mention earlier that appeared in New York Magazine when it was the Sunday supplement of the Herald Tribune. That dealt entirely with the question of public housing and admission to public housing. That appeared in 1964. The other publications appeared within the period from 1964 up to and including the present time.

SOUTHERN DISTRICT COURT REPORTERS
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Q Do you have any association with any educational institutions?

A Yes, sir.

Q Could you tell us what they are, please?

A I'm an adjunct professor in the school of architecture at the College of the City of New York, which is part of the City University, where I teach a departmental elective for fifth year architectural students in the housing of the metropolis.

I am adjunct professor also in the Pratt Institute in Brooklyn and have been such since 1960, and I teach there graduate students in planning on the economics and sociology of housing.

I have also taught intermittently from about 1964 and most recently this past spring, 1973, the New School for Social Research, where I teach courses in housing, housing policy and major housing issues.

Q Do you have any familiarity with what is known as the West Side urban renewal area?

A Yes, sir.

Q Would you describe the geography of that area?

Withdrawn.

Would you tell the geographical boundaries of that area?

A The West Side urban renewal area extends on the west side of Manhattan from 87th Street on the south to 97th Street on the north, from Central Park West on the east to Amsterdam Avenue on the west.

MR. SPECTOR: At this time, your Honor, as I previously advised the Court that I would be making the following request and I advised certain counsel yesterday and others who I could not reach this morning, in connection with this witness' testimony and also in connection with the general offer of proof on the part of the plaintiff in this action, we respectfully request that the Court and counsel view the area. We feel that this is a very important element in connection with the general understanding of our case and of the proof that eventually will be adduced throughout this hearing.

In that connection we have taken the liberty of making arrangements to have two limousines outside of this courtroom which, if your Honor agrees, will transport the parties present here, including the court reporter, to the site and back to the courtroom this morning.

THE COURT: What have counsel in this case to say, if anything, with regard to this proposition?

MR. LAND: I think it is a wonderful proposition. I think we should have a view.

However, the general rule, as I understand it, is when we are going to take a view of some physical evidence outside the courtroom that appropriate notice be given prior to the time to all counsel so that counsel may view the area, know about the area and that it may have its people point out to counsel what is up there to see.

So essentially if we go right now, I might as well not even go because I don't know what is up there. I haven't seen the area, at least in terms of what this witness will testify about.

I certainly think, as a matter of fact, the Government will make the appropriate motion later on in the trial with notice to all parties that we see the entire area up there once the Court is informed what it is going to be looking at, because right now we are not really sure exactly what we are going to see up there. I think we should have the Court learn from the record exactly what is up there first and once we do that obviously a view is of utmost importance. But at this juncture it is entirely premature.

There has been no notice to me and if we go now I don't see any reason why I should attend because I would have absolutely nothing to contribute to such a

view.

THE COURT: What do you think, Mr. Gold?

MR. GOLD: Your Honor, I would have to agree with Mr. Land. I heard about this very candidly this morning from Mr. Douw, who said that someone had called Mr. Levy, so that was my first notice of it.

I agree it is a good idea, but I think we perhaps ought to get further into the testimony so, again, we know what is going on.

I have been up in the area perhaps once in my life.

THE COURT: Mr. Douw, what do you think?

MR. DOUW: I join in that, your Honor. I heard about this proposal to visit the area early yesterday evening and we had no time to prepare for this or to map out exactly what we should see and what the purpose is and I also did not understand it would be in connection with Mr. Starr's testimony.

THE COURT: Mr. Spector called chambers yesterday and I got back to him around 6 o'clock and he made the suggestion that he has advanced this morning and I told him that it was agreeable with me. It certainly was evidence that I couldn't exclude. If counsel made a request that the Judge view the site, I

think the Court is constrained to and must grant the application.

But I did say to him to please get in touch with counsel, advise them, and he evidently has done his level best under the circumstances.

There is merit to the objections that counsel record. They say if we are going up there let's go so fully prepared that they will know what to accentuate, what to look for, what points to make, what to have the record reflect and so forth.

I am going to give you a short recess, a few minutes, talk to one another, see if you can work out something. If you can, I am at your call, so to speak. If you can't, we will just have to put the application over for some future time.

Lest I forget it, in order to have the record absolutely clear, although it is quite evident that is what has come to pass, evident I say from the comments of the Court yesterday, the application made yesterday to withdraw the temporrary injunctioh is granted. That completes the record.

The papers, Mr. Clerk, will be so endorsed as of yesterday's date, and we began upon the statement of the Court yesterday to consider these proceedings as the

trial on the merits.

Gentlemen, talk to one another, see what you can iron out.

(Recess.)

THE COURT: Well, gentlemen, what has been achieved, if anything?

MR. SPECTOR: May it please the Court, counsel have discussed the application I made and the position of counsel for the defendants, as I understand it, have not changed.

If I may state to your Honor, I feel that it is imperative that the Court and counsel in this kind of a trial, when we are discussing a neighborhood, at the inception get a general overview of that area. It is not my intent and was not my intent and I made it clear to counsel that I intended to prove anything at this visit this morning through this witness or any other witness which I might produce, I simply would request that the Court view on Columbus Avenue Site 30, which the Court has heard much about in previous days, the Trinity School, Leader House, Columbus House, Strycker'sBay, Columbus Manor, those houses which are on Columbus Avenue from 90th to 94th Street simply walking up Columbus Avenue and walking into those buildings to have a visual impact for

the Court and for counsel.

I do not intend to prove anything, adduce any testimony along those lines or anything else and I feel that the later testimony will fall into place and it will be much better understood if we havea view, because that is actually the best evidence itself at this point. Later on if a more detailed view along the lines counsel seeks is required or necessary, I certainly have no objection. As a matter of fact, I would foster a second view along that more detailed line.

But my intent at this point is a general view so that we know what we are talking about.

THE COURT: I got your point.

What do you say, Mr. Land?

MR. LAND: I think a view is proper, but as I understand it, we don't even have the U. S. Marshal to escort us up here which is essential to any view outside the Court House.

As a matter of fact, the U. S. Attorney often participates in views and we will be glad to arrange to have the U. S. Marshals take us up to Site 30 when it is convenient to the Court, not only to Mr. Starr, but to the other people who would like to point things out to the Court up there.

Obviously, there is going to be a long trial after you come back from your engagement in the other parts of the country and we will still continue. Maybe a time either then or maybe early October would be the appropriate time after, of course, we are prepared to enter into these various buildings that Mr. Spector indicated.

THE COURT: Mr. Spector, the very prospect that seems quite clear from what has been said, the prospect that we may have to return again, does not result in any enthusiasm by the Court with respect to taking a visit this morning.

If I can wrap it all up, so to speak, by going there, I'll do it, but I certainly do not want a return visit.

I am obliging you, I think the Judge should do it, but let us wrap it up all at one time.

MR. SPECTOR: In so far asthat is concerned, that is the precise reason I first put Mr. Starr on the stand. Mr. Starr is familiar with the area. If there are any questions concerning which building is which, he certainly is in a position to answer it, if that is necessary.

In so far as the plaintiff is concerned, we do

not anticipate the necessity of any further visit. I merely make that statement, because counsel for the defendant viewed this in a different light. But in so far as the plaintiff is concerned, all we are concerned with is to have a visual view, because we are going to be talking about Columbus House, we are going to be talking about the Trinity School, we are going to be talking about basically a few blocks and we feel by seeing it the later testimony will go more quickly, the Court and counsel will understand it more quickly because, as they say, one view is worth a thousand words, and that is the only intent of this view that I have suggested this morning.

I have, as I stated, provided transportation which I feel will be adequate and acceptable to counsel and to the Court by way of two limousines, which are available right outside this courtroom, which will bring us back to the court after the view is completed.

THE COURT: Counsel, with great frequency, the Judges of this court are called upon to deliberate and make determinations with respect to the matters that are far more involved geographically, et cetera, than are involved here. We have maps, extensive maps.

If every time a crime was committed and the intimate details of the exact spot are brought into play,

the Judge doesn't adjourn court with the jury to look at that exact spot, it is described, it is testified to and we get the evidence in that way.

Here, however, because there was this general outline or, rather, the plan that the Government concedes that was going to affect the area that we are concerned with here, I thought that generally speaking we ought to take a look at it and give you a chance to point out whatever you wish. That is the reason you took the court reporter along, not just to have me look at some buildings. What I see with my eyes isn't reflected by the court reporter. So I can get most of this from a map, but I wanted an addition to it. I felt the Judge should accede to your request.

But where there is opposition, no. If they say they want to be enlightened a little bit more so that they can point out things to me at the time, let's make it a thorough job. They resist this and they assign pretty good reasons. I can't throw it in the discard.

Actually, I thought it was going to take place today and I made arrangements accordingly, but when I hear opposition, I can't just chuck it out ofthe window. They have got something there. They should be prepared. I don't want to waste time.

All right, that's it. The application is denied, with permission to renew.

MR. LAND: Here is a map which may assist Mr. Spector with the witness.

THE COURT: You heard the Judge?

MR. LAND: Yes.

THE COURT: How does that help you? I made a ruling, didn't I?

MR. LAND: Yes.

THE COURT: Let us not add things unnecessarily.

All right, Mr. Spector, where do we go from there?

BY MR. SPECTOR:

Q Mr. Starr, would you tell us specifically what you personally know beginning at a point of time when you first came into the picture with respect to the West Side urban renewal plan?

A The West Side urban renewal plan first came to my attention in approximately 1957.

Previous to 1957 a city agency known as the Slum Clearance Committee, under the chairmanship of Robert Moses, had been assigned by the then Mayor of New York City, Mr. Wagner, to exercise the City's slum clearance and urban renewal activities under Title I of

the National Housing Act of 1937, as amended, more particularly as amended in 1949.

The Slum Clearance Committee embarked on a number of Title I projects. The purpose of them was to get rid of unsuitable and insanitary housing land that predominated in an area by knocking down all the buildings within that area, recapturing the land by eminent domain for the City and reselling it to one prospective developer at a price that was suitable for the highest and best use of the land.

There was quite a public outcry in the middle '50s against the continuous of this type of slum clearance, which left no buildings behind, destroyed many of the ties of the neighborhood and perhaps more important even than that it ended up with a clump or cluster of new buildings, all of which look very much alike, all of which were out of scale with many of the buildings around them and which it was a process which if continued indefinitely would have had the city look as though it had been built within a very brief period of time, like an Army camp, if you will, of tall buildings all identical.

Mr. James Felt, who was then chairman of the New York City Planning Commission, wanted to conduct slum clearance in a different way, a way which would leave

behind in the area that required drastic Government intervention a large number of buildings that were old buildings but that were suitable buildings, useful buildings, buildings that would provide variety of harmony in the city scape, and he concentrated his attention, Chairman Felt did, on the area I have described on the west side of New York between Central Park West and Amsterdam Avenue between 87th and 97th Street.

This was a most intriguing area. Its character was largely determined by the construction years ago of the elevator railway on Columbus Avenue. That elevated railway was built long before any development took place and that elevated railway blighted the avenue frontage on Columbus Avenue, so that when builders came to subdivide the area onthe west side that I have been talking about they found that the only people they could get to live on the Columbus Avenue frontage were people of low income who would live in tenant houses, but that on the side streets between Columbus and Central Park West families of much higher income were willing to buy single family row houses in which they would live.

So that you had on the west side a most singular arrangement of demography in New York City. You had middle-class people living on the side streets

and low income families living in the tenant houses on the avenue frontage. You had luxury apartment houses which came to be built on that frontage of Central Park West facing the park. Therefore, you had a mingling of various economic groups, you had tremendous transportation facilities, you had educational facilities nearby, you had the park and you had Riverside Drive.

But over the years these brownstone houses on the side street no longer provided suitable living accommodations. They were four, sometimes five stories high, many of them were heated by coal furnaces, many families found it impossible to maintain the staff of servants which they had been able to have earlier, and so many of the families living in those brownstone houses moved out and the brownstones were cut up into small rooming units which were largely occupied by low income people, many minority group members, and which provided miserable housing accommodations for those low income people.

I was appointed --

Q I don't want to interrupt you, but try to fix a time that these events occurred, if you can.

A These events, the deterioration of that neighborhood took place, in my view, over about a 25-year period beginning in the early '30s and lasting through the middle

'50s, when Mr. Felt conceived his plan.

Mr. Felt's plan was quite simple in its essence. Its essence was to get rid of the tenement houses on Columbus Avenue, to replace those with new apartment houses and to redevelop under private individual ownership the brownstone houses on the side streets so that these would once more be suitable for single family occupancy or perhaps for occupancy by a single resident owner who would then lease out upper floors of his buildings for small apartments for families to live in.

In fact, the condition in the west side in these rooming houses was so serious that I was appointed by the then Deputy Commissioner, Mr. Pruesse, in 1960 to be a member of a special committee to decide what to do about rooming house conditions on the west side.

This committee made a recommendation which was later adopted by the City of New York as law to the effect that families with children who no longer legally be permitted to occupy those rooming house accommodations on the west side.

The original plan presented by Mr. Felt did not meet with the approval of Mr. Moses, who was chairman of the Slum Clearance Committee. He said it was too complex and too difficult, it could never be executed, so Mayor

Wagner established an Urban Renewal Board, of which Mr. Felt became chairman simultaneous with his chairmanship of the City Planning Commission and the one mission of this board was to accomplish the West Side Urban Renewal plan.

Because of the demography that I described with the low income people on the avenue, the original middle-class owners, most of whom had left, on the side streets, with the high rent dwellers on Central Park West, any plan for the west side urban renewal area necessarily required that the different groups of people who were living there be represented in the final demographic mix that would be found in this area when the urban renewal plan was to be completed.

Q You say different groups. Would you describe that more fully, please? What do you mean by different groups?

A You had people living on Central Park West who were capable of paying very substantial rents, on the order in those days, I assume some people were paying a very high rent of $60 a room. There were apartments on the west side renting for 200, 250, perhaps as much as $400 a month. There were people living in the tenant houses on Columbus Avenue, many of them non-minority group

people, many of them of Irish background who had been living there for many, many years, paying rents that were probably as ~~long~~ low as six and seven or eight dollars a room a month, so that a ~~tenant~~ tenement apartment in mid-1957 protected by rent control on Columbus Avenue where the elevator had long disappared were paying somewhere between 50 and 60 dollars a month rent.

You had on the side streets in the rooming houses many occupants, many of whom were non-white, many of them Puerto Rican, who were paying as much as 12, 15 and 20 dollars a week for a single room with partial access to a single bathroom, maybe perhaps as many as seven rooms legally allowed to use a single bathroom, each of them paying rents of that sort and many of those people not working, many of them supported by Welfare and living, as I say, in very bad conditions.

Now, these were the three groups which required some representation in the finished mix, the wealthier people on Central Park West, the moderate income people who were still occupying the tenant houses on Columbus Avenue and the very low income families who were living in the rooming houses which had been converted from original one-family homes on the side streets.

Q And that mix, you are telling us, was the

intent of the Urban Renewal Board in further development of that area?

A Yes, sir.

May I amplify that?

Q Please.

A In order to cause the reuse of those brownstone houses as single family homes, the Board depended or looked forward to the investment of rather large sums of money by prospective owners of the buildings who would invest that money in refitting those houses so that they would be suitable for their use. And the problem that was faced by the Urban Renewal Board was how to encourage this private investment both in money, time and effort, and at the same time permit the continuation of low income population in numbers which would not be so great as to frighten the middle class people who might do this rehabilitation away from the area to which the Urban Renewal Board was seeking to act.

I want to emphasize again the unique quality of this area, the unique juxtaposition of the different social classes largely as a result of the once existence of the elevated railway. I don't think you would find in many other American cities an area in which different socio-economical classes work so close together, and

in developing the mix or developing the design or the allocation of prospective rental levels here the greatest problem faced by the Urban Renewal Board was to satisfy several objectives which were very, very difficult to reconcile:

First, the right of the people living in the roming houses to remain there, second, the economic interest of the middle class people who might come in and rebuild those rooming houses for their own occupany and, third, the families living on Columbus Avenue who tended to be large families, many of them rooted in the local Catholic parishes who were very, at that time, suspicious of any Government activity whatsoever.

The balance of those interests of those groups was very difficult, indeed.

Q You use the phrase frighten away property owners. Could you explain what you mean by that?

A Yes, certainly.

A man buying a house which had been a rooming house which had been vacated before he bought it by the effort of the Government would be faced with the question of whether this neighborhood would remain a sound place in which to bring up his children, whether it would be safe for his wife to walk down the long block between Columbus

Avenue and Central Park West to go to the market to buy things, whether there would be decent places to play, whether the property in which he was investing money, much of it, of course, borrowed money but nevertheless borrowed on his signature, would lose or gain value over a period of time, whether the type of tenancy he would attract because most of these buildings were too expensive for one family to live in the entire building, as I have said before, the prospect would be that some apartments would be provided upstairs, whether an owner could attract a stable tenancy in the area, and if those answers to those questions could not be answered in the affirmative, private investment in redevelopment of those brownstones could not take place and without private development and without private ownership the economic future of those brownstones was very problematic.

Q In your judgment, propery owners who invest money in those kind of areas under those conditions do react in that kind of a way?

A I say that unequivocally on the basis of many many interviews that I had over the years beginning with the first announcement of the plans from people who called me at the Citizens Housing and Planning Council, who asked my advice, who expressed their fears and many of whom I

have -- of their fears and their hopes, and many of whom I have had discussions with in the intervening period.

Q Mr. Starr, you brought us up chronologically to the constitution of the Urban Renewal Board.

Will you please then tell us chronologically as best you can what happened after that, beginning with the constitution of that Board, what it did and what happened with respect to the Urban Renewal area that we have been talking about?

THE COURT: You understand, Mr. Starr, that the emphasis I placed at the very outset of your testimony does not apply to such broad spectrum that is evidently now being sought to be developed and you are to feel free to amplify and to instruct -- that really is your province -- and take nothing for granted. That is not my field.

Do you understand?

THE WITNESS: Thank you, your Honor.

THE COURT: Go ahead.

A The Urban Renewal Board, which Mr. James Felt was chairman, had a number of members of people who were prominently connected with the real estate and development life ofthe the city.

I remember J. Clarence Davies as one of them,

and if I remember correctly the executive director was the late Sam Ratensky.

The Board published, with the City Planning Council, a brochure which set forth in color and in some detail its prospects for the city for this area.

Q Timewise, can you --

A I would say -- I haven't refreshed my recollection, but I would guess that that brochure came out in 1958. That's a guess. It might have been 1957, it might have been 1959.

The Urban Renewal Board then presented a preliminary plan for public discussion, which was, I believe, contained in that brochure.

The first plan provided for precisely what I have described, renewal of the brownstones, conservation of the Central Park West frontage and redevelopment of the Columbus Avenue frontage and the east side of Amsterdam Avenue.

The original proposal provided for 400 public housing units to be located in the area --

MR. LAND: Your Honor, I have some question as to the relevancy of all of this background testimony for this reason:

I believe it was stipulated that the only thing

relevant in this action is the most recent urban development plan, that is, the fourth plan, and perhaps the witness could direct his testimony to what this plan was under the recent four plan so we can skip the changes of what happened in the other three plans since plaintiffs counsel stipulated that that is not relevant.

THE COURT: I would welcome what the witness is attempting to do as a piece of background instruction to make it more vivid and understand the pertinent portions I think it should be restricted to. So I will take it. It helps me evaluate the true significance of that portion of the total testimony that counsel seem to agree belong here.

Mr. Land's statement --

MR. LAND: I will withdraw the objection.

THE COURT: All right. Now he withdraws it. Thank you.

Won't you please proceed, Mr. Starr.

MR. LEVY: Your Honor, before we get on --

THE COURT: Now wait a minute.

Mr. Douw, you will have to take over from now on. I don't want any -- are you a member of this bar?

MR. LEVY: Yes, I am.

THE COURT: When were you admitted to the

Federal Court?

MR. LEVY: I believe in 1970.

THE COURT: Yes.

Is it that this gentleman is more familiar with the details?

MR. DOUW: Yes, that is true. It is one of the factual details of this matter.

MR. LEVY: Your Honor, can we approach the bench so we can clarify this situation?

THE COURT: No. This is all open.

Tell me why we have to have Mr. Douw and you?

MR. LEVY: Your Honor, originally I was a counsel at the Community Action For Legal Services. I handled the case initially. I then went into private practice. I still represent Strycker's Bay on certain matters. I have a four-year familiarity with the problems involved here.

Mr. Douw was called into the case at the last moment and hopefully eventually he will be able to take over totally, but at this point I think I have a greater depth on the factual background of the case.

THE COURT: All right. Very well.

With that understanding and restricted to that, we will allow your participation, but please understand

that it is nothing new that a Judge should say, "I want one spokesman for one client," and that is something we just got to bear in mind so it isn't anything personal. I just don't want different lawyers, I want to know which lawyer I have got to hold responsible.

All right, go ahead.

MR. LEVY: Thank you, your Honor.

Your Honor, my question was that Mr. Starr is referring to documents. There has been quite a bit published on this renewal area. I wonder if we can have greater specificity as to which documents he is talking about.

THE COURT: I presume in due time the documents will be made a part of the record. It might be advisable if those documents are here to show them to the witness so that he can tie them right up with his testimony and receive them in evidence and so forth.

Very well, go on, Mr. Spector.

Q Mr. Starr, do you recall the question? I believe you commenced to answer the question concerning what work the Urban Renewal Board had done since its inception and the path that it was taking.

Q Well, having originally proposed 400 public housing units, the Urban Renewal Board, under public pressure

from many sources, increased the number of public housing units in its presentation of its plan to the Planning Commission to 800 units.

The plan was then heard by the New York City Planning Commission, all other major aspects of the plan that I remember remained the same, and the Planning Commission approved the plan.

Subsequent to that time further public pressure developed on behalf of that group and the west side urban renewal area that was living largely in the brownstone rooming houses and in some of the tenant houses on Columbus Avenue and on the Amsterdam Avenue frontage demanding that the final plan as approved contain more low rent housing units. The claim was made that this group was inadequately represented in the mix of housing that was proposed or that had been approved by that time by the New York City Planning Commission.

You understand, sir, after being approved by the Planning Commission this plan had to be presented to the local governing body, which is the Board of Estimate, for its final approval.

At that time a very serious communal dispute developed between the advocates of the low income, low rent units and other elements in the community and ultimate-

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ly there was intervention here, which I remember very clearly because I was part of it, in which Mr. Joseph Monserrat, who was at that time a representative of the Puerto Rican Government's Migration Division, the Department of Labor, called a meeting of a number of people, including myself, that demanded that we support the proposal of the Puerto Rican community, as he described it, for many, many more low rent units in this area.

Q Could you fix a time as best you recollect of that meeting?

A This immediately preceded the approval by the Board of Estimate of the west side urban renewal plan. I would date this around 1963.

Q Tell us what happened at that meeting.

A Well, Mayor Wagner, Milton Mollen, who by that time became the head of the Housing and Redevelopment Board --

MR. LAND: Your Honor, can we stipulate, if it is so, that the witness attended that meeting so we have some --

THE COURT: Yes, of course.

Were you physically present?

THE WITNESS: I was physically present at the first meeting to which I refered, that is, the meeting with

Mr. Monserrat.

I was physically present at the Board of Estimate meeting when Mr. Milton Mollen announced that he, as chairman of the Housing and Redevelopment Board, and the Mayor were prepared to recommend to the Board of Estimate a revised version of the original plan increasing the number of low rent units to, if my recollection serves, approximately 2500.

MR. LAND: That is the meeting you are now going to discuss that you were present at?

THE WITNESS: Well, that was at the Board of Estimate that this announcement was made.

That was the final disposition of the matter. This was an attempt to compromise, as I say, the various elements that were involved in this neighborhood plan, this urban renewal plan, so that there would be housing in a quantity that would seem reasonably just to the low income families, that would not intimidate those families of higher income who were hoped would invest in the brownstones and that would make the sale or rental of middle income housing on the avenue frontages possible.

THE COURT: When you use the word "intimidate," just what do you mean by that in that context?

THE WITNESS: Your Honor, I mean that

prospective resident investors would feel that they would be safe, that their investment would be financially secure because the area would continue to attract people of the same socio-economic level and that their children would be able to attend satisfactory schools at which their learning experience would be satisfactory to them in contrast to moving to the suburbs.

Q After 1963, how did the plan develop?

A The plan developed along the lines of the agreement.

Naturally changes took place in the course of construction and the course of maintenance and operation of the buildings. Deeper subsidies were required in order to make the buildings come in in rents that would hit significantly people at the same socio-economic level from which they were originally designed.

Among the major changes that took place was the passage of Federal legislation which provided additional subsidization of what had been the so-called middle income apartment houses that were to be built along the avenue frontage. There was first the FHA221D3 program, which provided for approximately a three-~~year~~ 0/2 interest rate on mortgage loans, and then came the FHA236 program, which could be tied together with the Mitchell-Lama program to

provide for loans on which the debt service would be as low as 1 per cent.

In addition to that there were rent supplements that were made available in connection with the FHA236 program that gave a certain number of families, perhaps 30 per cent of the residents in a 236 subsidized project, additional subsidy that would enable them to pay even less rent, so about 30 per cent of the 236 housing was going to be made available to low income families.

The process develped not without argument, not without anger and rancor, not without the feeling on the part of low income people that they weren't adequately taken care of, not without the expression of fears on the part of middle class people that they were inadequately taken care of, but by and large the project followed the original outlines of the amended plan that was approved by the Board of Estimate in, I think it was, 1963.

Q And construction continued and rehabilitation occurred in the area?

A Yes.

Q How would you describe --

THE COURT: Wait. He didn't respond.

Q Excuse me.

A That is correct.

Q How would you describe the area from 1963, say, through 1968 in so far as the neighborhood itself is concerned compared to the way it was prior to 1963?

A The neighborhood seemed to me to be improving itself along the lines the plan had indicated. Private brownstones, privately owned brownstones were being rehabilitated, apartment houses were rising along the Columbus Avenue frontage and they provided housing which, in my view, was infinitely superior to what had been before.

The Public Housing Houses, Stephen Weiss Housing, opened up and, as I see it, is operating very satisfactory.

Other housing opportunities became available for low income families through the operation of the subsidization program and it seemed to me that in general the plan was making considerable progress.

Q Did there come a time when any particular or significant change in that rise in the neighborhood as you just described it occurred?

A Well, I think there were two significant changes, Mr. Spector, over the years. The first one was that gradually the fully tax paying apartment houses which had been a part of the original scheme dropped out

entirely.

Q Will you, as best you can, fix a time when that occurred?

A It is very difficult for me to fix a time because it happened one by one that the prospective sponsors of fully tax paying apartment houses began to feel that these apartment houses would be unmarketable along the Columbus Avenue frontage.

Q Although it would be difficult to fix a time, as you state, could you give us a period as best you can, one, two or three-year period?

Are you talking about 1960, 1961?

A No, I am talking about a later period than that. I am talking about a period between 1964 and 1967 perhaps. This was a gradual process where sponsor after sponsor felt that he could no longer rent a fully tax paying apartment in the area.

Q What happened?

A What happened was that those projects became converted to Mitchell-Lama projects, which are partially subsidized, indirectly subsidized by the State and City, it involved lower or a very considerable measure of tax exempt or tax abatement and it involved low cost Government mortgage loans, so that the rental levels in those

apartments were lower than had originally been expected given the tremendous distortion of all the numerical rent levels by the fact of inflation in housing, original costs and housing operations.

Q In 1967 was the neighborhood still on the incline?

A I thought the neighborhood was improving constantly and I thought it was getting better.

Q What happened after that?

A Then we had, I think, a number of events that were important to future developers.

It seems to me that the whole question of the accord which had been reached before the Board of Estimate at the meeting I described became increasingly under challenge. People had moved away and, of course, under the original agreement they would have the right to move back. In fact, the area was staged so that some could move from one area and another area --

MR. LAND: Your Honor, can we have some clarification of the type of people he is referring to who moved away at this juncture?

A Well, the people who moved away were the people, sir, who were living in the buildings which were being demolished as part of the plan or which were being

radically altered as part of the plan, which tended to be low income people.

The area was cut into three sections which were staged differently so that people were encouraged to move from one staging area to another with the theory that they would move back, but sometimes they didn't move back, sometimes they didn't move to the other staging areas, sometimes they moved to other sections of the city, sometimes they disappeared, sometimes, on the other hand, families increased in size, people who were minor members of a family before the urban renewal plan, grew to adulthood and got married and now demanded the right to move back on behalf of themselves and their new spouse and perhaps even their children, and the issue became complicated by these very natural and very human and very understandable pressures.

I believe, also, that there are some people in this area and some people in the city whose objective was to stir up a human conflict in the area, who for one reason or another of political motivation wanted to exploit the inevitable unhappiness and disturbance of this kind of area for its own purposes and I am convinced that that was a part because I have taken part in hearings where this seemed to be an essential motivation of some

Do you mean that I think it is surprising?

of the people who were testifying at the time.

Q Excuse me. Are you talking about particular organized groups in the area?

A Well, I'm talking --

THE COURT: May I say this:

These questions are all right, but will you please hold them so that I am not jarred as I try to follow the witness. I am trying to get his point and all of a sudden counsel interjects.

You can hold it. You won't be losing anything.

Of course, if there is an objection to the quality of the evidence, its admissibility, that is another matter. That you shouldn't wait on. But otherwise, please hold your fire.

The witness is going forward and he can't explain this in a number of sentences. The Judge has encouraged him to be thorough and complete.

Now go on, Mr. Starr.

A I am saying it is almost inevitable when the City attempts surgery, reconstructive surgery, if you will, in a densely populated section of the city that there is bound to be conflict between elements of the population that are affected in different ways and that there are people in this city, and I guess in any city in

the world, where you have political freedom who see here, sincerely see a challenge to the well being of the groups they represent or else see a possibility of exploiting the unhappiness for the purpose of destroying faith in the governmental processes that are involved in this kind of an enterprise.

And having listened to them at the Board of Estimate, having heard challenges to the Mayor and his good faith -- I remember on one occasion at the Board of Estimate I remember a very dramatic and almost frightening confrontation -- I had the feeling that in addition to all the very real hardship and difficulty that this kind of reconstruction involved, there were elements in this area that were seeking to exploit that for purposes which I think had nothing directly to do with the housing benefits involved.

MR. LAND: Your Honor, I move to strike that last statement on the ground that he is testifying as to hearsay statements and his own feelings which are certainly not relevant in this action.

THE COURT: I will let it stand and give you the right to renew your objections not only to this but to other portions of the witness' testimony at a later period of time.

I am just trying to take the whole picture and allow you at the right time to ask the Court to eliminate portions of testimony that is given. Let us try it out that way.

You are not forfeiting anything.

MR. LAND: Thank you, your Honor.

THE COURT: Go on.

A By 1970 or 1971, we saw a new type of activity taking place in the west side urban renewal area, the introduction of squatter families into some of the buildings which were scheduled for demolition.

THE COURT: Will you define, please, although I think I know but I would like to have your testimony on it, what do you mean by a squatter family.

THE WITNESS: I mean, sir, a family that is not previous resident in a building moves into a building which has been cleared partially or totally in preparation for demolition and announces its intention to stay in that building and to interfere with further demolition of that building until it has received a promise of satisfactory housing elsewhere.

THE COURT: All right.

A The arrival of the squatters presented the City with an acute political problem. These were people who claimed a serious hardship and who obviously were in dire need of housing and the City ultimately made an accomodation with the squatters in order to end the embarrassment.

Another type of action took place at the time which I think has also had an effect on the demographic mix. Whereas, the 236, FH236 projects were intended to be -- were stated by the City to be intended for occupancy 70 per cent by those who could afford the basicly subsidized rents, that is, the rents assuming a 1 per cent debt service, and 30 per cent by low-income families, the State Welfare Department ruled that it would allow the New York City Department of Welfare to pay the rents of Welfare families in the 70 per cent of the apartments that were presumably to be reserved for the higher income families, so that the mix of low-income families instead of being 30 per cent of the total occupancy of the several 236 buildings involved instead became all or nearly all of those 236 buildings because of the fact that the Welfare Department was paying the rents of these people.

I am not here to equate Welfare status with social problems, but I am here able to testify on very

long experience that there is more likely to be a combination of multi-problem family situations on Welfare at a time of general economic improvement, general prosperity, than there is to be such a concentration of multi-problem families in the population, and it is my belief that as the result of the increase in the number of low-income families supported by Welfare in this particular area there was an apparent increase in the number of multi-problem families living in this area and it is my belief, also, that this has had a very -- the effect of causing a great deal of alarm on the part of the middleclass families who purchased brownstones and who moved into the cooperative apartments paying the standard Mitchell-Lama rent.

MR. LAND: Your Honor, your previous ruling was we would reserve our rights to object to this. I will make an objection if you like, but I will wait until his testimony is over, because I find this testimony he is giving now quite --

THE COURT: Whichever way you wish. If you just wait as you have just now, stand up and make your objection and then renew it after the testimony is all in, all right, or you can hold off your objection now without losing anything thereby and address yourself to a motion to strike certain portions of the witness's testimony when he is all

through.

MR. LAND: Probably the better thing is to wait until it is all over.

THE COURT: I should think so, certainly as long as the Court has assured you you lose nothing by that approach.

MR. LAND: That is what I understand. Thank you.

Q Mr. Starr, you told us that the property owners in the area have been frightened or have become frightened.

Would you tell us from a different point of view what you have seen in the area, how it was developed physically since 1971, when you say the squatters came in, and whether or not you still see an increase in the area?

A That is a very difficult question to answer, Mr. Spector. It is very hard for a casual observer to walk through an area and to see vandalism, to see fear, to see even good things when you walk through an area.

The buildings are new buildings. I see more graffiti on the walls, but I don't think that is of particular significance.

I have received many communications from people living in the area expressing to me their heightened fear, their discomfort, their sense that they would not be able to sell their brownstones at anything like the price that

they put into the brownstones, and I have a sense of a growing fear and discomfort on the part of many people in the area.

THE COURT: That part, I am afraid, is not evidence. I myself will interfere to strike it.

I want the benefit of your own estimate based on what your eyes beheld or what your ears heard.

THE WITNESS: My impression, sir, is that this area is balanced at a very crucial point at this moment. There has been vast public expenditure here in the development of a fine section of the City, there has been considerable private investment.

It is my impression that the people who are living in this area today are very worried and will move out if they feel that there is any change which would increase the number of multi-problem families in the area, it would increase the threat of valdalism, it would decrease the value of the public schooling and that wouldmake their feelings of safety less real.

I think if it had not been for the vast public expense and private investments that have taken place there, that point of change would have already have been reached. The only thing that keeps that area as it is is the fact that there has been this high level of investment there.

Q What happens to a neighborhood or an area when these people, these property owners, as you have stated, do move out in numbers? Do you have an opinion as to what happens to an area?

A Well, I've seen this happen --

THE COURT: First your answer is yes or no. Do you have an opinion on that score?

THE WITNESS: Yes, I have.

THE COURT: What is that opinion?

THE WITNESS: It is my opinion that when the owners of houses in an area become so frightened for their safety and so depressed about the economic future of the area that they flee. And I have seen them flee from sections of this City in East New York, in certain sections of Flatbush, in sections of the Bronx. I've seen the result of the flight in deteriorating housing, in the disappearing of racially integrated areas.

I have seen areas in this City deteriorate to the point where they don't provide decent housing for anybody, because once the original owners flee, the process of block-busting takes place and we end up with a slum that provides no good housing for anybody. That's what happens.

Q Have you ever heard of the term tipping point?

A Yes, sir.

Q Would you tell us what that means, please?

A The phrase "tipping point" refers to an area of racial mixture, a heterogynous area in which you have a majority group, historically in Americ--, of course, that would be a white group, and you also have a minority group living, and the neighborhood can be said to be in equilibrium when a member of a majority group chooses to move out and finds that he can sell his property or the landlord of his building can replace the tenant with a member of the same majority group.

There comes a point when the minority population reaches a level at which when a member of the majority wishes to move out it is impossible to find a member of the same majority to move in, and once that point has been reached the neighborhood tips over so that it no longer provides racially integrated living, it very rapidly becomes exclusively a minority group occupancy, and that is the point which is described as the tipping point.

Q Do you have an opinion with respect to the West Side urban renewal area today as it relates to the concept that you just outlined for us, to wit, tipping point? Do you have such an opinion?

A I have an opinion.

Q Would you please equate the tipping point concept

to the West Side urban renewal area and state that opinion for the Court?

A It is my opinion that an increase in the public housing within the urban renewal area, especially under present circumstances of public housing management, would present a very serious threat of tipping the area to the point where it will cease to be an integrated area, except for the fringe of luxury housing along Central Park West.

THE COURT: We will take a recess at this point.

(Recess.)

THE COURT: The gist of the off-the-record conference was an application by Mr. Spector that we discontinue today at noon, that this witness has a vital engagement and an application was made to the Court to please allow it to take place with the promise that hereafter with the time set by the Court for the taking of testimony will be strictly observed from start to finish.

This is the last time I will accede to this kind of request. Nothing but serious illness will alter the program set by the Court.

All right.

BY MR. SPECTOR:

Q Mr. Starr, do you have any financial interest in any property in the geographical area described as the

West Side urban renewal area?

A No.

MR. SPECTOR: Cross-examine.

MR. LAND: Your Honor, you indicated previously that at this juncture we could make the appropriate motion to strike certain portions of the testimony relating to his personal views based upon hearsay testimony.

THE COURT: I would be in a better position to rule on what I think you have in mind after you get through cross-examining.

MR. LAND: Very good, your Honor.

THE COURT: It will accentuate the value of your objections.

MR. LAND: Very good, your Honor.

CROSS EXAMINATION

BY MR. LEVY:

Q Mr. Starr, you are not a resident in the West Side urban renewal area, are you?

A Yes, sir.

THE COURT: Counsel, again I must say to you, you talk too fast. I do not get it and the acoustics are terrible. It's not your fault, but there it is.

I want to hear everything that is said. Take it slowly.

MR. LEVY: Is there any need to repeat that question?

THE COURT: Yes, would you be good enough to repeat it.

Q Mr. Starr, youare not a resident of the West Side urban renewal area?

A No, sir, I am not.

Q Are you a resident of the City of New York?

A Yes,sir.

Q Mr. Starr, on direct examination you described the history of the area through the period 1956.

Is it your opinion at that point that the West Side urban renewal area was in danger of becoming an ethnic ghetto?

A At what point do you mean, sir?

Q In 1956, when these plans first came into consideration.

A Yes,sir, it was. Yes.

Q Was there at that time an influx of white families as well as minority families?

A Well, the West Side urban renewal area, it seemed to me, had already witnessed a very large influx of non-white families into the buildings on the side streets and to some extent also in the tenant houses along Columbus

Avenue and Amsterdam Avenue.

Q Was there also during this period an influx of white families?

A Into those particular buildings.

Q Into the area in general

A Not to my knowledge.

Q Are you familiar with this document, Mr. Starr?

A Yes. I haven't looked at it in years, but, yes --

THE COURT: Let the record show what it is. You hold up the document and you say, "Do you recognize it?"

Q Can you identify this?

A Yes, this is one of the brochures published by the New York City Planning Commission.

THE COURT: Mark it Stryker's Bay exhibit for identification.

(Defendant Stryker's Bay Exhibit A marked for identification.)

Q Mr. Starr, are you aware of the purpose of this document?

THE COURT: Always say after it is marked, "Are you aware of the purpose of Exhibit A for identification?" Are you aware of it?

THE WITNESS: Yes.

THE COURT: All right.

Q Will you explain to the Court the purpose?

A This document was issued by the New York City Planning Commission and my impression was also by the Urban Renewal Board for the purpose of explaining why redevelopment of the 20-block area between 87th and 97th Street between Central Park West and Amsterdam Avenue was desirable and what form that redevelopment should take.

Q Are you a lawyer, Mr. Starr?

A No, sir.

Q I would like to read to you a section of this document and I would like to know whether you subscribe to the truth and the accuracy of that portion. I am reading from page 10 of the exhibit.

"Although the total white non-Puerto Rican population did decrease by roughly a quarter between 1950 and 1956, nevertheless, white non-Puerto Rican families surprisingly constituted more than half (6800) of all families who moved in during the period."

Would that be an accurate protrayal of what was happening between 1950 and 1956?

A You asked me whether I subscribe to the truth of that statement. I don't know exactly what you mean.

Do you mean that I think it is surprising? Yes, I do think it is surprising.

Q Is it true?

A I have no way of judging the truth of that. I assume that it is true as it was prepared by the Planning Commission.

Q In other words, Mr. Starr, your earlier testimony about the outward migration of white families during this period is incorrect?

MR. SPECTOR: Objection.

A That is --

MR. SPECTOR: Objection. He is characterizing his former testimony. That is not what this witness said.

THE COURT: The witness is capable of taking care of himself in the light of his testimony.

Objection overruled. What is the answer?

A The two questions have nothing to do with each other. The first question is whether a certain small percentage, what is it, 25 per cent, of the people moving in were white, and now you are asking me to say that I was inaccurate when I said that a large number of the people who were leaving were white or the majority of the people that were leaving were white. The two questions don't connect with each other.

Q I believe you testified on cross if not on direct that during this period the area was becoming ghettolized, and wouldn't the conclusion that significantnumbers of white families, non-Puerto Rican white families, and the number 6800 is given in this report, were still moving into the West Side urban renewal area at least modify that assertion?

A Not in the slightest, sir.

You have asked me whether -- you have given me figures that three-quarters of the people moving into the area were non-white. I would ask you how long you can continue with that kind of an intake and not end up with a ghettolized area?

Q I dont think that figure is in the record, that portion I read to you. What I read to you surprisingly more than one-half of all families that moved into the area were white.

A Then I misunderstood you.

Q Well, with that understanding, would you then categorize your description of what was happening in the area between 1950 and 1956 as a process of ghettoization?

A Well, I would like to see the entire text, because -- let me see the book, if I may.

THE COURT: Refer to A for identification.

Q Yes (handing).

THE COURT: Since you are dealing with portions of it, you are reading portions of it which strictly speaking you shouldn't be allowed to do unless it is in evidence, is it being offered in evidence?

MR. LEVY: I will make that offer, your Honor.

THE COURT: Any objection to its being received in evidence by anybody.

MR. GOLD: No.

MR. LAND: No.

MR. SPECTOR: Your Honor, may I see it, please?

THE COURT: Surely.

MR. LEVY: Here is another copy I will show Mr. Spector.

A Well, read the entire paragraph.

THE COURT: Just hold it, Mr. Witness, until Mr. Spector can decide whether he has an objection.

MR. SPECTOR: I have no objection.

THE COURT: No objection. Mark it in evidence, Mr. Clerk.

(Defendant Stryker's Bay Exhibit A was received in evidence.)

THE COURT: Now, Mr. Starr, will you give your answer.

THE WITNESS: Yes, sir.

If counsel would read the entire paragraph, he would see that the sentence in question modifies the previous sentence or amplifies the previous sentence to the effect that the area did not present a flat two-dimensional picture of non-whites and Puerto Ricans moving in and whites moving out, there was some churning.

Now, it also states that the Puerto Rican population in the area had increased significantly and it states that there were more white families moving in than Puerto Ricans. What it doesn't say, and which is very important to an understanding of the demographic flow, is how long the families that moved in stayed in, or the white families that moved in relatively temporary families that moved out, do we have three and four shifts and changes in single apartments where you had a succession of white occupants or was that the character of the Puerto Rican migration?

The ultimate significance is what is the percentage, the relative percentage of the non-whites as against the Puerto Ricans in the area, and what you have inthat paragraph is a statement that the non-white population was growing in this particular area.

Q. I will ask you again based on what you have

read from that paragraph completely whether an area in which 6800 white families representing one-half of the population influx into that area in a six-year period, whether that fact would lead you to a conclusion that the area was becoming ghettolized racially?

A It seems to have led the Planning Commission to that conclusion. It does not mitigate my previous conclusion.

Q You state the Planning Commission concluded that and I will let you have the exhibit again.

A All right.

THE COURT: What is the question? What is the pending question?

MR. LEVY: The pending question is whether these facts as stated by the Planning Commission would lead one to conclude, or Mr. Starr in particular, as to whether this area was becoming ghettolized.

A I am reading from the document.

THE COURT: Page, please?

THE WITNESS: Page 10.

THE COURT: Yes.

A "From 1950 to 1956 the Puerto Rican population of the area increased almost eight-fold, from 1700 persons to 13,000 persons. Moreover, the Puerto Ricans, because of language and cultural differences, are conspicuous

today as were once the great waves of European migrants from which most New Yorkers are not too many generations removed.

"While an increase of this magnitude in a particular ethnic group has, indeed, had great impact, the forces at work are considerably more complex."

Then it goes on to discuss the part that you read previously.

Q It doesn't say that the area was becoming a racial or an ethnic ghetto, is that correct?

A It does say that the Puerto Rican population had increased eight-fold in a short period of years.

Q Mr. Starr, when the West Side urban renewal area was first discussed, and I am talking about the period from 1956 publication of Exhibit A to the adoption of the plan -- I believe that was finally adopted in 1962. Would I be incorrect in that assumption?

A I said it was 1962 or 1963. I dont remember the exact date.

Q Could you describe for the Court the tools available for producing housing?

A We had, of course, the conventional market tools, mortgage money that was available or might be available from

the normal banks.

We had Section 220 of the FHA, which provided for mortgage insurance for housing construction in urban renewal areas.

We had the writedown, the land writedown of Title 1 of the Housing Act as amended.

We had the Mitchell-Lama program, which provided for State or City mortgages at a reduced rate of interest as against the private market, coupled with tax abatement, and we had the public housing program, both the State, which represented partial capital subsidization, and Federal program, which represented 100 per cent capital subsidization.

Q The types of housing to be produced under these programs could be categorized as low, middle or moderate and high and market rate housing, is that correct?

A We use those terms very loosely. Those were the terms we used.

Q Could you explain to the Court, taking a period of approximately 1960, what the price range in each one of those categories would mean in terms of per room per month rental?

A Yes.

Well, conventional housing built on urban renewal land, I assume, would rent, to the best of my recollection,

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at about 65 to 70 dollars a room a month during that particular period.

The Mitchell-Lama housing on urban renewal land, in changes subsequent -- it depends exactly what date you are talking about.

Q Let us say 1960 or 1962, since that would be the --

A Well, there were a number of changes in the Federal law regarding the amount of land writedown permitted under Title 1 and I don't remember exactly the date on which that took place.

If we say that Mitchell-Lama housing in that area with the maximum permitted tax abatement at that particular time, probably it would rent in the area of $35 to $60 a room a month, maybe as low as $30 a month.

Q What about low-income housing, low-rent housing?

A Low-rent housing in the Federal program, my guess is the projects under construction at that time would rent in the area of somewhere between 13 to 15 or 16 dollars per room per month and State projects somewhat higher by maybe two or three dollars more a month.

Q You testified that prior to the adoption of the final plan by the Board of Estimate, a commitment was made for 2500 low-rent units, is that correct?

A That's correct.

Q And those were to be units within the 13 to 15 dollars a month price range?

A No, sir.

Q Do you have any information on what was meant by low-income housing, low-rent housing?

A Low-rent housing at that particular period meant public housing. It was not specific, to the best of my recollection, as to any dollar value on the housing. There might have been estimates given, but since under the then Federal and State law the tenants in low-rent public housing had to pay the entire operating cost and management of the development in which they were living plus their share of the general overhead of the Housing Authority, it was impossible then to make a firm commitment with respect to rental level in any project yet to be built.

Q Would the rental for those low-rent units be likely to exceed $20 a room?

A At the present time, I believe so --

Q At that time?

A At that time "likely to" at a future time when those things might be built, I don't know what you mean by "likely to."

We have been living in an inflationary period,

that the rents of public housing at a future time would be at a certain dollar level, I think the assumption is rather a large one.

Q Mr. Starr, I don't believe that was responsive to my question.

My question was, at the time that this plan was discussed, was there an assumption or a discussion of what 2500 units of low-rent housing meant in terms of rental of that housing, dollar amount?

A I would say, sir, that there was an assumption that the rent would be related to the incomes of thepeople living in the area because that's the standard by which admission to public housing is had.

Q We can agree that there was a commitment for 2500 units of public housing made prior to the adoption of the plan?

A In the area and its immediate periphery.

Q Mr. Starr, you also testified that one of the problems encountered later in the urban renewal plan was that, in fact, the relocatees, the people who had moved out, had a right to return which they could exercise?

A Yes.

Q When was this right extended and under what circumstance?

A That was one of the basic considerations of the plan, the effort to extend a right of return. This was discussed from the very beginning.

Q And this would mean all people who were removed, by removal activities --

A Obviously it meant all people within the context of the plan. This was one of the major determinants of the housing mix that would go into it, but only one. There were others which I alluded to in my direct examination.

Q Mr. Starr, when you were discussing the three levels of housing, at that point you gave certain figures, $65 to $70 for high income -- there is no need to review those.

In the years succeeding 1962, since the adoption of the plan, has there been a change in Mitchell-Lama rentals, straight Mitchell-Lama rentals?

A Yes.

Q And what has been that change?

A Well, the change has been a very, very substantial increase in Mitchell-Lama rent.

Q Are you familiar with what current Mitchell-Lamas are renting for, ones produced within the last six months?

A Well, I would guess that they are even in excess of that 60 to 70 dollars which I described as the luxury rental back in 1959.

Q Would $95 a room be --

A It wouldn't surprise me in the slightest.

Q You also made mention of the 236 program.

Is it your understanding of that program that it was aimed for the middle level, the 30 and 60 dollar-a-month level originally?

A Well, it was partly aimed at that level and part aimed at the lower level because of the provision of rent supplements in addition to the 236 mortgage subsidies or debt service subsidies.

Q You mean taking the rent supplements taken with the 236 program would produce a low-rent housing?

A Yes.

Q Without the rent supplements it would be a middl income housing?

A That's correct.

Q Are you aware just offhand how many units of rent supplement housing there is presently existing in the West Side urban renewal area?

A No, sir, I am not.

Q. Would the number 40 be out of line for you?

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A It seems quite low to me, yes.

Q But you have no independent knowledge?

A I have no independent knowledge.

Q You made mention of a ruling of the State Welfare Department.

Are you personally familiar with that ruling?

A Yes. I corresponded with Commissioner Levine.

Q Was this an order promulgated by Commissioner Levine?

A No, it was not an order promulgated by Commissioner Levine, it was permission granted to the Department of Social Services of the City of New York to pay the so-called middle-income rentals in 236 programs on behalf of clients of the Welfare Department of the Department of Social Service.

THE COURT: You lowered your voice. I didn't hear it, Mr. Starr.

THE WITNESS: I am sorry. I used interchangeably the Welfare Department and the Department of Social Services.

I believe the correct name is the Department of Social Services.

THE COURT: Thank you.

MR. LEVY: May I have just a moment, your Honor?

THE COURT: Surely.

(Pause.)

Q Mr. Starr, are you aware how Welfare rent limits are set?

A Yes, in general.

Q Can you explain to the Court how that is done?

A Well, in general, a family on Welfare in the City of New York gets a basic budget which covers the State's view of what it costs a family of the specific size to live less any income that the family may have from other sources and excluding rent. An allowance is made for rent. There is an administrative ceiling as to the total amount that can be allowed for rent, but the administrative ceiling is subject to review and subject to being set aside in special cases by the Department of Social Services itself.

Q Are you aware, Mr. Starr, of how rents in 236 projects are set?

A Rents in 236 projects are set, I believe, by the Federal Housing Administration after calculation of the operating and debt service requirements of the project and they are set at a level which enables the project, in theory, to meet its operating and debt service requirements.

Q So when Welfare families are permitted to enter 236 housing, what is happening, in effect, is a coalition of the limits proposed by the two agencies, is that a correct assumption?

A When the rents of the 236 project fall within the allowable limits or fall within an area which the State Welfare Department permits the New York City Department of Social Services to pay, the family is given an allowance, rental allowance equal to the cost of the rent in the 236 project.

Q Are you aware of whether the income level or the rent level allowed by the Department of Social Services at the present time is equal to the rental of 236's that is presently in existence?

A Well, I do know that in a number of -- this may not be responsive so I won't answer.

Q The question is --

THE COURT: No, no, I am missing it when you both talk at the same time.

What were you about to say, Mr. Starr?

THE WITNESS: I said I don't know the specific answer to the gentleman's question.

THE COURT: Next question.

Q You are not aware of whether Welfare families would continue to be eligible for 236 housing?

A I have every reason to believe that the Welfare families now in 236 housing will continue to stay there.

Q But whether in subsequent buildings, new buildings that arebeing constructed, whether they can be tenanted by

Welfare families?

A I don't know.

Q Mr. Starr, you mentioned crime in the West Side urban renewal area.

Has there been an increase or a decrease in crime in the last six years in that area?

A I don't know. I mentioned fear of crime.

Q Do you know whether the fear of crime on the West Side urban renewal area is any greater than it is on the East Side, for example, or 72nd Street on the West Side?

A Since I don't live in the West Side urban renewal area I do not know from my personal knowledge, I know from what people have told me about their fears.

Q Are you aware, as I asked before, of any corresponding fears in other areas of the City?

A Well, by the same method, except for the area in which I live myself.

Q But you are aware that there is corresponding fear throughout the City or in the two areas that I mentioned for example?

A Rarely in areas in which there has been such a vast investment of public and private funds.

Q Is there any other area in the City on Manhattan Island that has had such a vast influx of public

and private funds?

A In Manhattan, no, at least not in my recollection.

THE COURT: What?

THE WITNESS: At least not in my recollection.

Q So your method of comparison is really without meaning?

A That is if I decide that the City of New York consists of the Island of Manhattan rather than five boroughs Mr. Levy.

Q Well, is there any area in Brooklyn, for example, that has had an infusion of Federal and private moneys to that extent?

A Well, I think of Co-Op City in the Bronx, which --

Q I asked about Brooklyn.

A In Brooklyn? No, I can't think of any area in Brooklyn that has had a similar investment of public funds.

Q How about Queens?

A Queens, there have been very large developments in Queens. I can't measure the exact amount, but I am thinking of areas like Rochdale Village, which at its time had the largest single mortgage that we had used --

Q Did that have an infusion of Federal moneys?

A Well, I said Government and private moneys, or at least I meant to.

Q When you mention Co-Op City, that would not be strictly comparable because that is a new development built out of vacant land, is that correct?

A Yes, it's new land. But your statement that it is not strictly comparable would be argumentative as between you and me. I mean, I might think it was comparable and you might not. That is a subjective judgment.

Q Well, you would admit, wouldn't you, that there were significant circumstances that would differentiate Co-Op City from the West Side urban renewal area, including a history of the development of that area?

A Yes, I would admit that.

Q Mr. Starr, are you aware of how many people have been displaced from the West Side urban renewal area by these renewal activities which you refer to?

A No, sir, I am not aware of the exact number.

Q Are you aware of an approximate number?

A Well, I was aware at one time. I haven't got the numbers with me.

Q Are you aware of the laws governing the rights of relocatees displaced from an urban renewal area?

A Well, the laws have been subject to very recent change and I'm not fully cognizant of the most recent changes in the law, but in a general way I am familiar with it.

Q Mr. Starr, you mentioned several areas that have undergone a significant change in the racial populations of those areas, is that correct?

A Yes, sir.

Q Were these in the Bronx and Flatbush and in Brownsville? Are there any other areas that you can think of?

A Well, I named East New York as being one. Certainly the South Bronx is another. I see many other areas. Ocean Park out in Queens being another.

There are many areas in Queens that have been subject to so-called blockbusting, which has had the same characteristic. There have been many changes, many demographic changes here in the Borough of Manhattan in areas that have tipped from being white areas to non-white areas as the non-white population has grown.

Q Would these three major areas which you described in the south Bronx, east New York and Ocean Park, were they affected by this process of blockbusting?

A Some were. Those having single-family homes are subject to blockbusting. Those where you have apartment houses were obviously more easily what I would call a tipping point.

Q Were these areas -- we are talking when I refer to them to Ozone Park, east New York and south Bronx --

are there any of these three that are particularly outstanding examples of this phenomena?

A Well, they are all examples of neighborhoods which reached a tipping point and if I took the time I could give you many more such examples throughout the City.

Q Was east New York and Ozone Park, for example, areas of one or two-family homes?

A Ozone Park and east New York are largely one and two-family homes.

Q So they would be affected by blockbusting, is that correct?

A That's correct.

Q Could you explain to the Court what you mean by blockbusting?

A Certainly.

Blockbusting is a process in which one home is sold to a member of a minority group and thereupon real estate brokers attempt to frighten the adjacent or nearby homeowners with the spectre that the neighborhood is turning to minority group occupancy, and that if they want to get money for their homes they better sell them as quickly as possible and an atmosphere of panic is induced and rapid sales take place.

Q You mean it occurred with the introduction of

a minority family -- a few minority families in a previously homogenous area?

A Well, I know some areas --

Q Well, the answer to the question is yes or no.

A Well, the answer is no.

Q Why is that, sir?

A Because I know of areas where there was an interracial occupancy to begin with and the blockbusting began when somebody -- when the balance between black and white in the area was disturbed, and at that point the white families suddenly became panicky and moved out.

Q Was this the case in east New York?

A Well, we have to talk about specific blocks. My information is not sufficiently detailed to discuss specific blocks with you.

One place where I do know that there was an interracial balance to begin with which was upset would be in Flushing Heights, Queens, where you have both apartment houses and single-family homes and where you had interracial occupancy and ownership.

Q You testified previously on direct and one of the first things you said about the West Side urban renewal area was that it was unique in terms of its balance and its integration, is that correct?

A I talked about its social class balance, sir. I talked about one of the unique areas in the United States in which low-income families naturally lived almost immedistely adjacent to middleclass families.

Q So this was a unique aspect of the West Side urban renewal area?

A It was a unique aspect of those blocks on the West Side long before the urban renewal area came into existance and it was an aspect which had diminished in the 25 years before the West Side urban renewal plan as the side streets became low-income occupancy.

16 Q Well, blockbusting has no reference to low income, the introduction of low-income people into an area, does it?

A Blockbusting, as I defined the term at your request, had to do with racial composition.

Q When you talk about tipping point, that is what you are referring to, the destruction of a racial balance rather than an economic balance, is that correct?

A Well, I don't think it's quite so easy with respect to the word tipping point to make that distinction.

In the case of the West Side urban renewal area you have a fairly considerable number of non-white homeowners who have bought brownstones and invested very large

sums of their money and borrowed money in fixing it up.

If the neighborhood tips, they will get out along with the white people getting out. It won't be just a question of white people fleeing before minority group occupancy, it will be a question, as I said earlier, of middleclass people fleeing and, once again, those buildings deteriorating to a point no matter what the law says they will revert to rooming house multiple occupancy.

Q This is your assumption. You see no evidence of this happening.

A Well, you asked me my assumption so I gave it to you.

Q Yes.

Just to pin that down for the Court's benefit, this is an assumption, this is not something you observed in this area?

A Well, no. I am giving you my prediction at your request, sir.

Q I am still a little bit confused as to whether the infusion of low-income families or the infusion of minority families is going to cause this phenomenon?

A I think, as a matter of fact, it would be in the particular case of the West Side urban renewal area the infusion of low-income families.

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MR. LEVY: May I have another moment?

THE COURT: Surely.

MR. LEVY: I have no further questions.

CROSS EXAMINATION

BY MR. LAND:

Q Mr. Starr, when you began your testimony this morning you gave to the Court a rather impressive array of various boards and commissions to which you have been a member. I am left with the distinct impression that for a major portion of your adult life you have been directly involved in the field of housing, both public and private housing. Is that correct?

A For the last 15 to 18 years, yes.

Q And I come also away with the very distinct impression that during that period of time you have given advice to the City, the State and the Federal Governments as to means and methods to solve particular housing problems. Is that also correct?

A Both asked and unasked.

Q Excuse me?

A Both asked and unasked I have given advice.

Q Has your rendition of advice, whether by invitation or otherwise, been on a frequent basis?

A It's been frequent.

Q Would you say approximately every month or so you are called upon or you do give advice to some government agency doing something in the housing field?

A Well, I am not the delphic oracle who spouts forth wisdom on request. I mean, when something comes up which attracts the attention of my organization or myself, we speak. I couldn't qualify as to time.

Q Over the last several years I would presume you had the opportunity to discuss housing matters with S. William Green, the Regional Administrator of Housing Urban Development?

A Very frequently.

Q And you know him on a first name basis?

A Yes, indeed.

Q And also you would have many conversations with Mr. John Maylott, the Area Director of HUD?

A Relatively few. I don't know Mr. Maylott as well as Mr. Green.

Q Have you had an opportunity to discuss your views on housing with former Secretary Romney of HUD?

A Never.

Q How about the current colored Secretary Lynn?

A I never met him and he doesn't answer my mail.

Q You currently are the chairman of a citizens

housing and planning council. That is accurate?

A No, sir, it is not accurate.

Q What are you currently --

A The Executive Director.

Q The Executive Director of this council.

You said the council is a corporation?

A It's a membership corporation.

Q And there are members of this council?

A Yes, sir.

Q How many members do you have?

A We have about 1500 members, of which a very large number, probably a majority, are other organizations.

Q Are members of your council members of minority groups, low-income people?

A Some are, but I would be giving you a misleading impression if I told you that any significant number of our members are minority groups or low-income people because it costs $10 a year to belong.

We have black representation on our board of directors, we have Puerto Rican representation on our board of directors, we have social work representation on our board of directors and our organization came into existence primarily for the purpose of assisting the passage of the

first enabling act for the Public Housing in the State of New York in 1938 and we have supported Public Housing consistently since that time.

Q One phenomenon may be the Court will even take judicial notice of is that whenever a group is formed it generally has a particular aim in mind and in the field of public housing or housing as such the groups generally fall between those representing the minority interest or those representing the majority interest in terms of racial structures or income structures.

Could you define your group, whether it represents the white middleclass or upper white middleclass rich people or do you represent poor people or are you sort of in the middle?

A I would have to say that although our preponderant membership is white middleclass people, that the motive that stimulated most of them to join our organization and to found it in the first place is a philanthropic motive and an interest in the production of decent housing to eliminate, as a matter of fact, shameful slum conditions that have existed in this City of New York for the last 100 years.

Q Your last statement brings me to my next line of questions.

In your opinion, is there a severe housing shortage currently existing in the City of New York?

A There is a severe shortage, I think, of decent housing at low rentals. I am not convinced at this moment that there is an overall shortage of housing at all rental levels in the City.

Q But shortage that you are familiar with is predominantly for low-rent housing?

A Decent low rent housing.

Q I guess the key phrase there is decent, because we can all live in a pup tent on a street.

Do you know approximately how many people are currently in need of decent low-rent housing in the City of New York?

A I don't think, sir, that anybody knows a precise figure.

Q I agree.

A But if I took a rough figure of a million people in the City of New York who are living in sub-standard or nearly sub-standard housing or in housing in sub-standard and deteriorating neighborhoods, the median won't be far off in my opinion.

Q And it is the objective of your association to see that these people do obtain decent low-rent housing?

A That certainly is one of our major objectives.

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Q Would that be probably the most overriding objective of any which your association has?

A Sometimes that objective comes into conflict with other objectives.

We believe in creating and maintaining decent housing, therefore we have taken a strong position with respect to disruptive tenants who destroy or those whom we have reason to believe have hurt the housing of their neighbors. We sometimes favor industrial development over housing on the grounds that industrial development is part of the whole process of raising people out ofpoverty.

We have sometimes favored specific recreational facilities, like parks, over housing.

We don't favor, for example, building housing in public parks.

We try to evaluate each specific proposal for its contribution to the goal you described as well as to the general goals of the industrial and cultural progress of our City.

Q Okay, good.

One of the problems, of course, which I think you face in achieving this objective is that the people who need decent low-rent housing are generally concentrated in various areas of the City, such as Bedford-Stuyvesant and

Harlem.

Would you generally agree with that statement?

A I would generally agree that that is a correct statement, yes.

There are certain sections of the City deteriorating, they show softness, poor people are permitted to move in, the deterioration spreads and we have what you would call or what many people would call a slum and these are areas of such concentration.

Q And what you find, then, if we can use Harlem and Bedford-Stuyvesant as examples of this, is a concentration of predominantly more black people living in sub-standard housing?

A Right.

I would remind you, sir, that we had very, very severe concentrations of sub-standard housing occupied by white people in New York City back in 1937 and even much more recently. It's thought simply a racial problem, it's a problem compounded of many different factors.

Q Yes. I am speaking today the problem is mainly with the black poor?

A Statistically that isn't quite accurate. Statistically there is in total in the United States more bad housing occupied by white people --

Q I am speaking of New York City, Mr. Starr, and the housing problems mainly with the black and Puerto Rican poor.

A I think that is fair to say, but may I amplify my statement?

Q Sure.

A I think there are certain white groups in New York City that have very difficult housing problems. The aged, for example, whatever their race, in New York City has a terrible time finding housing. There are other groups in New York City that have a very difficult time finding housing. Single people, displaced people, I am thinking of the people on the Bowery and I am thinking of people who live on the margins of society. They also have a difficult time finding housing.

Q So as a person who expressed his views many times on housing, I will give you a hypothetical. Assume you have all of the money you could possibly want to build decent housing for the people now residing in Bedford-Stuyvesant and Harlem, where would you build that housing in the City of New York?

A I would build part of it, perhaps even the preponderant part, in Bedford-Stuyvesant and Brownsville, I would build part of it in other parts of the City and I

would try to give the maximum degree of choice to the poor people as to whether they want to live in areas preponderantly homogenous as to race and social class or whether they want to take on the responsibility and the problem of moving into a heterogenous neighborhood.

I am not one who believes, for example, in some of the guidelines that HUD has issued which would make it impossible to build housing except in areas of majority concentration.

Q Mr. Starr, I see it is ten minutes of twelve and you have an engagement I want to honor.

MR. LAND: May we pick up his examination at a future time, your Honor?

THE COURT: Why do you frit away the ten minutes?

MR. LAND: He has a 12 o'clock appointment.

THE COURT: Is the appointment at 12?

THE WITNESS: The appointment is at 12, your Honor, but I am perfectly happy to be a few minutes late. I have a good excuse.

THE COURT: Is this a point at which you are finished with that phase of your questioning?

All right. Let us not argue about it. Very well, if you feel that you would like to continue some other time, that is all right.

You are excused, sir, subject to being recalled, of course.

(Witness temporarily excused.)

MR. LAND: Thank you, your Honor.

17 THE COURT: Please keep your seats and listen very carefully.

The record will show the Court's displeasure that we were compelled yesterday to forfeit many hours which could otherwise have been filled with the taking of testimony.

I don't want counsel to forget for a minute that every Judge has his own working habits. The case is before Judge Cooper, not before some other Judge, and you will have to honor my particular approach to the need for thorough presentation and so forth that I insist on and that brings displeasure if it is not upheld.

Other Judges have their ways doing things equally earnest and equally conscientious, but let us understand each other that this Judge is dead against the wasting of time. I have already pointed out that I have been on my own since I was twelve, but I have many demands on my time now as a Senior Judge, that my calendars are full, that I took this matter on because of circumstances that have already been amplified on the record.

Having taken it on, I am the surgeon and I have

got to perform the operation and I have got to worry about it. It is my responsibility.

You have already been aware of my calendar in the future. I have stated it specifically, not in general terms. There are people in jail to whom I promised a trial and there are other vital matters that cry out for immediate disposition.

What am I going to do with a man with his leg off? He has been waiting for his chance at justice, too. There are other cases where the issues are throbbing and cry aloud for judicial intervention and disposition.

And so when the Judges of this court find themselves in a constant state of emergency, we have to do the best we can. We can't enlarge on time. Every date I fix for the taking of testimony must be fully occupied, because that time, if it is not occupied, is wasted. I can't suddenly call in another case on short notice.

I direct counsel, for whom I have respect and whose zeal and ardor and desire to do the right thing is evident to me, but I want the record to show that I direct them to consult with one another, to reduce the factual issues as much as possible by concession, to meet with frequency to the end that the taking of testimony will be a concentrated endeavor.

I don't want a witness put on the stand who hasn't been examined thoroughly before being put on the stand. You don't start to elicit testimony for the first time here, you do that in advance. Know thoroughly what your witnesses are going to say. Let us not waste the time trying to have him refresh his recollection for the first time here, let him refresh his recollection in your office so that you can develop or, rather, prod his recollection and make him recall, if possible, what he at the time seems to have forgotten. That has to be done that way, otherwise there will be no end to the trial of cases, and that is what the law endorses and that is what is meant by surgery.

When you come to an understanding as a result of your conferences, please reduce it to writing, a stipulation signed, so that there will be no question, and when you make a statement to me, there it is, there is the paper, there is the letter, Judge. Let us not spend a half-hour arguing as to what you had agreed on or what the other side disagreed on.

So I have got to appeal to you to honor the Court's instruction, and if you don't you will incur the displeasure of the Court and I will deal with the situation as best I know how, and I have not been known for being afraid.

I told you already that I have a criminal trial next week. It starts on Monday. We already know that there are high holy days Thursday and Friday of next week, therefore there cannot and must not be a court hearing on those two days. That puts us over until the following week.

We are to take testimony, and you are so directed to be prepared as a result of my having to call down in other matters and shift them, even though I had promised them trials -- I don't do those things lightly -- to go forward with testimony on this case on Tuesday, October 9th, and Wednesday, October 10th, full trial days.

In addition, Thursday, October 11, to 1.00 p.m. We start each day at 10 o'clock, unless I order an earlier hour.

I have already spoken with counsel or had my office speak with counsel in matters that will come up after I have, pursuant to an assignment by the Chief Justice of the United States, I have already moved other cases set down here by me -- by here I mean in this courthouse -- so that I can tell you that in all probability on November 20th a full day of testimony will be taken and November 21. As to those two latter dates, I remind you that you are to be ready on these two days, unless I cancel them by at least five days' notice.

Why do I say that? Because if sitting in as a judge way out West I find I need three more days to finish the trial, I am not going to say, "Go home, forget the ten days of testimony and go to somebody else," I will finish the case and then I will come back. If that should happen, you will be notified.

So that October 9th and 10th are definite full days. October 11th until 1.00 p.m. November 20th, 21st are definite, subject to cancellation by the Court.

I repeat, I will not have any fishing expedition here, I want thorough preparation. I have done it in my time without assistance. I was my own typist, my own processor, forfeiting my meals and going sleepless and I demand no less from you.

Any comment by counsel before I announce the final direction?

When we meet to continue with the trial of this case on October 9th at 10 o'clock, I want you, by the close of the day, as sworn officers of this court, mindful of the Judge's calendar, as he wants to be mindful at all times of your problems, I want to be told at the close of the day on October 9th what your best estimate is of the period of time it will take to complete the trial before us. That doesn't take an offhand sputtering of something, it takes

deliberation and care and you will have to state it on the record.

18 Is there anything that counsel would like to say or make any comment before we adjourn this case?

Mr. Clerk, be good enough to announce an adjournment of this case until October 9th at 10 o'clock in a room to be announced in the Law Journal. That is the best I can do on that.

(Adjourned to October 9, 1973, at 10.00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Roland N. Karlan	73	102		
Roger Starr	184	237		

EXHIBIT INDEX

Defendant Stryker	Identification	In Evidence
A	239	243

Trinity Episcopal School Corp.
and
Roland N. Karlan
v
George Romney, Sec. of Dept. of
Housing and Urban Renewal

71 Civ. 4315

New York, October 9, 1973
10:00 a.m.

- - -

(Trial resumed.)

- - -

Present:

Eugene J. Morris, Esq.
Martin Stuart Baker, Esq.

David P. Land, Esq.

Hadley W. Gold, Esq.

John de P. Douw, Esq.
Robert E. Levy, Esq.

- - -

(In open court:)

THE CLERK: Trinity Episcopal School Corp. v. George Romney.

MR. MORRIS: I just want to inform the Court that unless you knew to look in the Law Journal this morning, the finding of this room was extremely difficult. We wandered around the building for half an hour before we could get information about it because the attendant at the entrance to the building said he knows nothing about it.

THE COURT: If you come the last minute and make inquiry --

MR. MORRIS: I was here at 9:30.

THE COURT: Weren't you apprised that the hearings would continue here? You were notified.

MR. MORRIS: Not the room number.

THE COURT: Oh, yes, you were. You were told to look in the Law Journal all last week. It was in the Law Journal all last week.

Why did you wait until this morning?

MR. MORRIS: I am here. I had no difficulty.

THE COURT: I'm answering you. It was in the Law Journal all last week. Do you want us to send you an engraved invitation?

MR. MORRIS: I'm here.

THE COURT: You registered a complaint and you don't like it. Sir, I am answering you. It was in the Law Journal all last week.

MR. MORRIS: Thank you, your Honor.

THE COURT: Do you know of anything else more than that the Judge can do?

MR. MORRIS: No, sir.

THE COURT: Proceed.

Mr. Gold is now here.

MR. GOLD: May I say, your Honor, I apologize.

THE COURT: That is all right. Let us go ahead.

MR. MORRIS: Mr. Starr.

THE COURT: I understand Mr. Starr was waiting around since 9 o'clock. He was not told of the hour, he was not told of the change of room, which was published in the Law Journal, which is the medium by which the Court communicates with counsel so they in turn can communicate with their clients and witnesses.

Take the stand, sir.

Mr. Starr, you understand you are continuing with your testimony under oath.

MR. STARR: Yes,sir.

THE COURT: Very well.

R O G E R S T A R R, resumed.

CROSS EXAMINATION

BY MR. LAND:

Q Mr. Starr, we interrupted your testimony last week. Your last words were that, quoting from the record on Page 273, you said "I am not one who believes, for example, in some ofthe guidelines that HUD has issued which would make it impossible to build housing except in areas of majority concentration."

What do you mean by that statement?

A I am referring to the guidelines that came out several years ago, in which there was not quite a point-scoring system but a system using words like "superior" and "adequte" with respect to a number of different criteria for site selection, and the guidelines were so worded as to make it practically impossible to construct new public housing in an area that was either an area of minority group concentration or even in an area in which there was a balance of black and white groups which might be adversely affected by the introduction of more public housing.

Q These guidelines you refer to, are these what are known as the site selection criteria guidelines ?

A Yes, sir.

Q Are these the guidelines in which there are 8 separate standards in which HUD must measure before it constructs any housing project?

A Yes.

Q In view of your familiarity with this area of public housing, is it your understanding that these are the regulations that were promulgated pursuant to several court decisions which mandated that there be some systematic study made of an area before public housing is constructed?

A I wouldn't know how or why or -- excuse me. I wouldn't know why HUD promulgated these guidelines. I know

they were promulgated and I know that I communicated with the department while they were under consideration and registered my objections to them as originally promulgated or open for discussion.

Q Okay.

MR. LAND: Your Honor, Mr. Starr is talking about a federal guidelines here. Perhaps we could stipulate that one of the studies that HUD has made in respect of this project is the site selection criteria study which has been submitted to the Court although it was not introduced in evidence. Would Mr. Morris stipulate that the site selection criteria study which we previoulsy filed is the study which HUD conducted pursuant to the regulations that Mr. Starr is now testifying about?

MR. MORRIS: Yes, your Honor. As a matter of fact, I think it would be helpful to the Court if the exhibit were introduced into evidence in exactly the form that the Court already has it in the motion papers which were annexed to Mr. Land's papers and which he submitted in opposition, and that would give the Court the entire picture with respect to this site selection criteria situation.

THE COURT: Any objection?

MR. LAND: That is fine, I thinkit is --

THE COURT: The answer is no.

Any objection, Mr. Gold?

MR. GOLD: No objection.

THE COURT: Received. Mark it in evidence, Mr. Clerk.

MR. LAND: The one we gave to the Court is probably the second one on the stack from the top.

MR. MORRIS: If I may suggest, your Honor --

THE COURT: Please wait. will you?

MR. LAND: May I approach the bench and help the clerk?

THE COURT: Surely.

MR. LAND: It is probably this one right here.

Would you mark that as a government's exhibit for identification.

xx (Government's Exhibit B was received in evidence.)

THE COURT:Please continue.

Q Mr. Starr, I hand you Government's Exhibit B marked in evidence and ask you if you have ever seen that document or a copy of it before.

A No, sir.

Q Do you know whether or not the Department of Housing and Urban Development in fact made a study of the

guidelines you referred to in your earlier testimony?

A No, sir.

Q Speaking of your objections to the guidelines that HUD has issued, your objection is one in which you say it prevents housing except in areas of majority concentration. Could you please tell the Court what you mean by "an area" and what you mean by "majority concentration"?

A Might I see a copy of the guidelines to refresh -- the site selection criteria -- refresh my recollection?

Q Mr. Starr, what you have before you are the guidelines with the eight separate standards and each one indicated with certain findings.

THE COURT Showing the witness what?

MR. LAND: Government's Exhibit B received in evidence.

A The particular heading under which this problem comes up is the secind heading "Minority Housing Opportunities." And the objectives, as stated in the guidelines, are "To provide minority families with opportunities for housing in a wide range of location," to which I thoroughly subscribe; and second, to "open up non-segregated housing opportunity that will contribute to decreasing the effects of past housing discrimination." To that I also subscribe, sir.

However, whenwe get down to the details of how these guidelines are to be enforced, we find that a superior rating shall be given if --

THE COURT: No, excuse me. When you are reading from an exhibit, please indicate so the court reporter, who doesn't know whether it is your language or the language you are quoting, please say quote every time, will you?

THE WITNESS: Yes, sir.

A When we come to the details, the following words occur "A, a superior rating shall be given if the proposed project will located, one, so that it will provide opportunities for minorities for housing outside existing areas of minority concentration and outside areas which are already substantially racially mixed; or, two, in an area of minority concentration, but the area is part of an official state or local agency development plan and sufficient comparable opportunities exist for housing for minority families... outside areas of minority concentration."

The problem is that a superior rating is practically necessary in order to qualify a public housing project; the preamble of this makes that clear. If one takes these two ways on which a superior rating can be earned, we find that it can only be earned if minorities are outside, as I say, areas where minorities are already livigg

and outside areas which are substantially mixed, which means you can't put public housing in either black areas in New York City or substantially mixed areas in New York City unless it is part of an official plan and unless you can prove that there are adequate opportunities for racial minorities to live in mixed areas elsewhere.

Now, I submit to you, sir, that this makes public housing construction in the City of New York very, very difficult except in an area that is entirely white to begin with. And I have explored this matter at some length in an article which I wrote and have taken the position that if one makes this the major criteria or an essential criteria for site selection, it means that you can only build public housing here in New York City in entirely white middle class areas, and I submit, sir, that that may not in many cases, may not be the most important criterion for the selection of a site.

Q You indicated your objection there was as to the question of whether that guideline gets a superior rating. There are other ratings that can be given; isn't that correct?

A That is correct. The other rating in this case is an adequate rating.

Q Yes.

A The fact of the matter is that in order to gain approval the number of adequate ratings is limited; in other words, the site must be graded, it seems to me, above adequate in a specific number of criteria in order for approval to be given, and the result of this on this particular issue of not getting a superior rating makes it very difficult because some of the other criteria which have to do with physical location are so difficult to meet in the City of New York that this "adequate", on this rating, would have the effect of foreclosing the site.

Q Do you know what rating the proposed housing site in the upper west side received on this study?

A No, I didn't.

Q You referred to an article you wrote which explained your position. Would that article be entitled "The Lesson of Forest Hills"?

A Yes, sir.

MR. LAND: Would you mark this Government's Exhibit C for identification, please.

(Government's Exhibit C was marked for identification.)

Q Mr. Starr, I hand you Government's Exhibit C for identification and ask you if you could identify that for us.

A These are some pages clipped from an issue of

Commentary Magazine --

THE COURT: Is that the article to which you alluded in the course of your testimony?

THE WITNESS: Yes.

THE COURT: Next question.

MR. LAND: I offer this.

THE COURT: What do you mean by "this"?

MR. LAND: I offer into evidence Government's Exhibit C for identification.

THE COURT: Any objection, Mr. Morris?

MR. MORRIS: May I see it?

THE COURT: Certainly. It is your witness' article.

MR. MORRIS: Yes.

No objection, your Honor.

THE COURT: Any objection by counsel, any counsel?

MR. GOLD: No objection.

MR. DOUW: No objection.

THE COURT: Hearing none, it will be received. So it now becomes?

xx (Government's Exhibit C was received in evidence.)

Q Is it your testimony that that article reflects your position in respect of these HUD guidelines?

THE COURT: Mr. Land, when you have something marked, you must give it to the clerk to mark.

MR. LAND: I am sorry.

THE COURT: That is all right. Will you mark it right there, Mr. Clerk.

Thank you.

A On page 47, the article states -- only two of the categories, the second and third, concern us here, so this article deals with my position at the time this article was written on those two categories.

Q Okay. Fine.

In this article, do you refer to the west side of New York as one of the areas in which housing should be constructed, public housing?

A I make a statement to the effect that the West Side Urban Renewal Plan did indeed contain provisions for the construction of low rent public housing.

Q Did this article express any opinion as to the construction of low income public housing in the urban renewal area?

A Well, it expressed --

THE COURT: That you can answer yes or no, if you can. If you can't, say so. See, you cannot expound every time a question is put to you. If they want your

explanation, they know how to get it.

THE WITNESS: Would you repeat the question?

THE COURT: Certainly. What is the pending question, Mr. Court Reporter.

(Read.)

A Not specifically.

Q The title of this article is called "The Lesson of Forest Hills." Could you tell the Court in your opinion what was the lesson of Forest Hills?

THE COURT: Now you could expand.

A I expressed the view --

THE COURT: Beg your pardon. I hate to interrupt you. You expressed the view doesn't necessarily mean that you entertain that view right now. He asks you to disregard everything from your mind. Tell us right now as a sworn witness what is your answer.

Q Tell us what the Forest Hills problem was as you saw it and your opinion of it.

THE COURT: Right.

A In my view, the Forest Hills proposal was an unsatisfactory proposal for a public housing project.

Q Excuse me. Can you tell us what the Forest Hills proposal was, and then explain your objections to it?

A The Forest Hill proposal, as presented to the Board

of Estimate, was for the construction of six buildings of public housing containing about 880 apartments, to the best of my recollection, on a site just south of the Long Island Expressway in an area called Forest Hills.

I urged the Board of Estimate not to approve this project as presented because I warned that the foundation difficulties on the site were so serious that when the buildings came to be built there would not be six buildings, 10 or 12 stories high, there would be three much higher buildings, and I urged the Board of Estimate not to proceed until it had that information in hand.

The Board of Estimate nevertheless proceeded. Then the site became the proposal for the construction of three tall buildings on that same site. The proponents argued that this was an effort to scatter low income families in a middle class area.

In my opinion, the number of families in these buildings, the characteristics of the site were the highway on one side, the distance from the subway, the distance there from employment opportunities, made this an unsuitable site for scattering a few low income families in a white middle class area. And I suggested at the time in the article and it still my opinion that a prime area consideration for site location of low income housing should be

proximity to employment opportunities because that is the only way in which low income families can arise or raise their income from their current levels or from its current level.

Q You mentioned that this project was for a few families. How many is a few?

A Obviously the word "few" is by its very nature non specific, so that anywhere I would say up to 150 or 200 families would be a few taken by itself.

Q Okay.

Then your objection to the project was that the people who would live there wouldn't be near necessary community support services such as transportation facilities, jobs, perhaps schools, parks, hospitals and other elements of a community which people need in order to live happily; is that essentially your objection?

A That was one of my objections and perhaps the major one. I objected also to the size of the project.

Q Was any element of your objection to the project a consideration of the racial make-up of the people who would live in the project vis-a-vis the racial make-up of the people who lived in the surrounding Forest Hills community?

A Actually no, because I felt that the class element here was far more important than the racial

element in causing objection to the project.

Q What do you mean a class element?

A The social class element. The difference in social class between the surrounding middle income middle class community, was more important as an objection to the new project than was the simple racial question.

Q What has been the result of the Forest Hills project, if you know?

A I wish you would tell me more specifically what you mean.

Q Has the project been constructed along the lines in which it was planned, the three buildings' low income people ?

A It is now being built. The Board of Estimate adopted certain ambiguous,in my view, ambiguous resolutions as to its ultimate ownership and nature. I cannot tell you what the final outcome will be.

Q You indicated you had one major objection to the building of this project, being the absence of nearby community support facilities. What other objections did you have in the building of the Forest Hills low income housing project?

A I objected to its size, I objected to the height of the building, I objected to the fact that it was built

alongside a highway site which meant that access could be on foot only from one side, I objected to the traffic overcrowding that I thought would result locally from the project, and I objected, as I said before, to the nature of the approval by the Board of Estimate before the Board of Estimate was in possession of the facts concerning the foundations of the project.

Q Earlier in your testimony you indicated, at least this was several -- about a week ago -- that you would favor --

THE COURT: Excuse me. You seem to have forgotten. You have used that twice. You said last week in one instance. The last hearing was September 21st.

MR. LAND: More than a week ago.

Q In your earlier testimony in September, you indicated that you would favor construction of low income housing projects in Bedford-Stuyvesant and Harlem, and we were discussing at that time the hope that if there was an abundance of money available to construct housing any where, that you would favor building low income housing in those two locations of the city; is that correct?

A I don't remember making any such statements, sir.

Q I refer the Court to the record, page 272. The question was asked of Mr. Starr: "So as a person who

expressed his views many times on housing, I will give you a hypothetical. Assure you have all the money you could possibly want to build decent housing for the people now residing in Bedford-Stuyvesant and Harlem, where would you build that housing in the City of New York?

"A I would build part of it, perhaps even the predominant part, in Bedford-Stuyvesant and Brownsville, and I would build part of it in other parts of the city and I would try to give the maximum degree of choice to the poor people as to whether they want to live in areas predominantly homogeneous as to race and social class or whether they want to take on the responsibility and the problem of moving into a heterogeneous neighborhood.

"I am not one who believes, for example, in some of the guidelines that HUD has issued which would make it impossible to build housing except in areas of majority concentration."

Do you recall that question and that answer?

A Certainly. As you read it, yes.

Q So that as to the people now residing in Bedford-Stuyvesant and Brownsville, who are in need of decent low income housing, you would favor building a preponderant part of that housing in Bedford-Stuyvesant and Brownsville, would you not?

A No, sir, I didn't -- the statement that you read didn't say that. May you think I have changed my mind in the last few weeks. But the statement that you read said that my policies would be directed to giving the maximum degree of choice to the low income people as to whether they chose to live in Bedford-Stuyvesant or Brownsville or in other areas of the city, and if their choice made it necessary therefor to build a preponderant part of the low income housing in the areas of minority concentration, then perhaps a preponderant part should be built there.

Q Now assume that in Brownsville there are not decent job opportunities available, not decent schools, there are not decent transportation facilities, and there are not decent parks, and there are a number of hazardous roadways nearby, in other words, the same objections that you had to the Forest Hills project, would you then not be in favor of building a low income housing project in Brownsville?

A Certainly I would oppose a project on the basis of the individual characteristics of the site involved.

Q In other words, the overriding view , then, in your mind is whether there are sufficient supporting facilities in the community available to the people who will live there?

A Well, sir, I don't use words like "supporting

facilities in the community," because I don't know what they mean.

Q Well, what I mean by that, schools, hospitals, transportation, jobs, shops, parks.

A Yes. Those are very important criteria for sites which I would apply generally to sites, yes, ineed.

Q And if --

THE COURT: Will you hold it just a minute?

(Pause.)

THE COURT: I am sorry. Please continue.

Q In your direct testimony you mentioned the word "tipping" in terms of this particular site 30. Could you again explain to the Court what you mean by tipping?

A I mean by tipping to refer to a heterogenous area with respect either to social economic class or to race or to both. Tipping means the introduction of a critical number or critical mass of people of usually the minority race or the low income group into the area so that the members of the majority race or the upper economic group living in the area are fearful and leave in such great numbers that the change in racial or socioeconomic characteristics of the area is greatly accelerated and the area ends up to be an area of minority group concentration or of predominantly --

very heavily predominantly low income.

Q How would you apply that concept to the West Side Urban Renewal area?

A Well, the West Side Urban Renewal area was an attempt to do precisely what you asked me about before, namely, to provide in an area the supporting community facilities and services so that the area as a whole would be brought to life and maintained there.

In this particular area, with very high basic land values, there was a very strong effort to maintain in the area, and a very strong object of maintaining in the area a balanced group of higher income, middle income and low income families.

It is my view that when a critical mass of low income families is introduced into the area, the area will tip over. People who have been asked to invest in -- and have invested in brownstone houses -- will put those houses on the market and they will find their way back into single room occupancy.

Middle income families will refuse to rent in middle or -- to buy cooperative apartments in semi-subsidized buildings, and the vacancies will be filled by more low income people.

The characteristics of this plan which depend on

a solid community structure will be undermined and the whole purpose of the WEst Side Urban Renewal plan defeated.

Q This disintegration of a community as a result of tipping can happen in any community; is that correct?

A Well, it happens in a community or in an area in which there are two socioeconomic groups or two racial groups or groups that represent both of these things at once, living simultaneously within unique proximity to each other. It is unlikely to happen in an area in which only one group is living until the second group has built up its numbers.

Q But you mentioned the phrase "critical mass". When a certain critical mass of a minority moves into an area, the spectre of tipping looms; is that correct?

A Yes.

Q And that would happen in any area in which a critical mass or majority becomes present; is that correct?

A Well, you are using the terms "majority" and "minority", and the critical mass may be a minority rather than a majority.

Q Right; but it could happen in any community?

A Under the circumstances I described, yes.

Q And what in percentage of the population is the per cent of the critical mass of low income minority races which will cause tipping in the Upper West Side area?

A In my opinion, the tipping would occur at 2,500 low income units, which is the figure embodied in many speeches made by the City officials in the course of the development and also that this tipping might occur depending in part on the distribution of the 2,500 low income units. There were statements by Mr. Nathan in which he stressed the desirability of containing or providing for the 2,500 low income families in leased apartments in middle income projects rather than concentrating them in single large public housing structures. It would not only be in this case the

number but the distribution, it seems to me, that would be critical.

Q Why is 2,500 families a critical mass in your opinion?

A Because it seems to me that that is the figure which many of the middle income families who moved into the area in reliance on the plan accepted as a crucial element in the plan when they made their decision to move there.

Q In other words, if the figure which people relied on was one thousand low income families, then one thousand low income families would be the critical mass?

A Well, a great deal would depend on the characteristics of the area --

Q Well, you mentioned the reason why 2,500 was important in your mind, that that is what people relied on; is that correct?

A Correct.

Q So you say that if people relied on one thousand low income families, would one thousand then be the critical mass?

A Well, let me supplement my previous answer in answer to this question. I am not alone in thinking that 2,500 was a critical mass, because the City officials also thought that 2,500 was the maximum units of low income hous-

ing that should be provided in the area. The constant, repeated refrain of these City officials established this as the maximum number, provided they were properly distributed.

I can imagine a situation on the West Side where a smaller number, inadequately distributed or lacking supporting community services, might well constitute a tipping point, and I can imagine areas in this city, single-family home areas with minimum community support, where one family might constitute a tipping point in the process that we might call blockbusting.

Q Getting back to my question, if people relied on -- if the middle income people in the area relied upon statements that there would be one thousand low income families, would one thousand low income families then be the critical mass?

A It might.

Q Suppose the number were five thousand low income families to live there, and people relied on that figure. Would five thousand then be the critical mass?

A It's a hypothetical. It might.

Q In other words, tipping to a large extent depends upon the subjective and sometimes prejudicial views of the majority living in an area.

MR. MORRIS: I will object to that, your Honor. It does not correctly characterize what the witness testified

to at all.

THE COURT: Objection overruled. The witness seems to be capable of handling the challenge, and it is an important question, and if the witness can clear it up, it will curtail a lot of questions in the same area.

What is the pending question, Mr. Reporter?

(Question read.)

A I will try to be as brief as possible in answer to your question, Counselor.

The subjective views of people in an area are formed by many of the characteristics of the area. If there are community services that we discussed before, if there is a morale, if there is a feeling that the movement or the entry of a minority group into the area is part of a concerted plan, then people's subjective wishes or subjective judgments will support a larger number than if there is not this common bond and the sort of under-structure of community services.

So that when we talk about a subjective judgment being what forces people out earlier or prejudice that forces people out earlier and tips an area, you've got to understand that the subjective judgments are based on the characteristics of the particular area in question, and based on the particular case of the West Side area on a plan which has been notorious,

which is well known to everybody, which was part of an agreement or covenant, if you will, with the people who moved into the area and invested large sums of money in their homes in the area, both black and white people, and if the original basis of the covenant is broken in this area, you may call their subsequent action subjective or even prejudicial.

But in my view, sir, they wouldn't have moved into the area if they were prejudiced people. They moved into the area expecting and knowing that it would contain a mixture of races, a mixture of income groups supported by communal services and fixed around a known constellation of families of different ethnic and socio-economic backgrounds.

Q Let me understand you.

Assume that the plan for the Upper West Side Renewal Area was for five thousand low income families, and assume that everyone who moved into the area was relying on the figure of five thousand low income families. Then in your view the tipping would occur if more than five thousand were introduced into that area; is that correct?

A Well, sir, I find it very hard to join in both your assumptions simuntaleously. I find it very difficult to believe that if five thousand low income families had been allocated to the area or five thousand low rent units had been

allocated into the area, you would have had no movement into the area of the middle class people who fixed up their homes and who bought cooperative apartments and who moved into the area. You would have a wholly different set of facts. So it is very hard for me to answer your hypothetical question, because I don't --

Q Instead of making it 2,500, which you say if the figure you have chosen and which the people relied upon, suppose it was 2,800.

A Well, sir, in my opinion, 2,500 was regarded by the City at the time it adopted the plan as the maximum of low rent units which could be provided in that area and still make the area inviting for the middle class investment in the brownstone houses on the side streets and the cooperatives along the avenue.

Q But suppose that figure, instead of being 2,500, was 2,800. Would the 2,800 then be the tipping point?

A I'm not sure that you would have a West Side Urban Renewal Area if the number had been 2,800.

Q Suppose it had been 2,200.

A If it had been 2,200 and people had moved into the area, the middle class people had moved into the area in the expectation of the 2,200, and the number had been exceeded, it might or might not have been the tipping point. I have no

way of knowing that. I'm sorry.

Q Don't areas tip which don't have as a predicate an official figure as to the number of low income people that can live in the area?

A Perhaps, sir, I had better explain to you once again what the West Side Urban Renewal Area was.

Areas tip when people are already living in them and the minority group comes along and changes the characteristics of where people already were living. In the West Side Urban Renewal Area, the object -- or one object of the program was to devise a plan which would be attractive to people to move into the area, and you had to have something that would make it attractive for private -- and I'm not talking -- private investment -- and I'm not talking about the private investment of entrepreneurs so much as I am talking about the private investment of cooperators and home owners who bought the row houses.

So that these people moved in differently, and their reaction to a tipping point is in a sense -- cannot be compared with the tipping point of people who were living on a block and who might tip when the first non-white person moves into an area. They might move without any calculation of number, just as part of a general fear.

But the West Side Area was a different kind of area

from that. It was a planned area, as I tried to indicate.

Q Yes, but your testimony is to the effect -- if I am wrong, correct me -- that for some reason the figure of 2,500 low income families was interjected at some point in the plan or some point in public discussions of the area and that people relied on that figure, and now there are some claims that the figure, the number of low income people residing in the area will go above 2,500, ergo, the conclusion is that the area will tip and the middle class will leave.

Is that your testimony?

A No; it's not my testimony at all, and I think you know it's not my testimony.

THE COURT: Now, wait, Mr. Starr. That is gratuitous. This is a representative of the Government. He has the respect of the Court, and I know that what he is endeavoring to do is to cross-examine you, and he should with vigor, because your testimony is quite telling, on its surface.

He has a right to go after you much more vigorously in tone than he has, and you must recognize that you are subject, like every witness, to a very thorough cross-examination, especially since the Judge is the one to be enlightened by this.

This may be your field. That doesn't mean that a Judge can't become acquainted with your field, but he has to

be taught. I am willing to be taught, just as I go from one case to another -- a patent case; I am taught. It is explained to me why the wheels must function the way they do, and I finally am able to come to a conclusion and apply the law to it.

Now, be patient with all of us, because to me this is very vital, and I am getting some valuable lessons here which need to be expanded, if anything.

Go on, Mr. Land.

THE WITNESS: Would you read the question?

THE COURT: Yes. Read the question, please.

(Question read.)

A All right. My testimony is and was that the 2,500 figure was not interjected at some point for some reason in the discussion, that as a result of intensive bargaining by representatives of Puerto Rican people, by the then Mayor of the City of New York, Mr. Wagner, by Mr. Milton Mollen, who was the then chairman of the Housing and Redevelopment Board, the figure of 2,500 low income units became adopted as the principle on which this entire area was to be reconstructed.

That is my testimony.

Q What does the figure 2,500 low income families represent? Total number of low income people residing in the area? Total number of low income units to be built? The

total number of low income people who are displaced as a result of demolition of existing facilities, or what does it represent?

A The figure 2,500 represents the total number of low income units which would be created in this area as a result of the urban renewal program, or the urban renewal plan.

Q What do you mean by the word "created"?

A That would come into existence in the plan by means of construction, that is to say, new construction, or by means of conversion of existing apartments or, as later turned out, by means of leasing by the public housing of units in buildings constructed under one or another of different plans or by the -- excuse me -- by the provision of subsidies and rental supplement payments.

Q Were the people to reside in these new creations to be people who had previously lived in the area but who were displaced during the construction process?

A The people who lived in the area were given priority for the -- for their return or for the allocation of low rent units.

Q In other words, this 2,500 units of low income construction represents the invitation of those people who were displaced to come home again, essentially?

A Yes, sir, but I think it should be explained that when any area is cleared for redevelopment, people are relocated. Not all the people who are relocated choose to return to the area from which they originally came. Many of them find themselves better off in the other area. Some die; some families split up. There are many, many demographic changes that take place between the time of clearance and the time of reconstruction, and the -- I can see no way to match the low rent units in an area -- and specifically in the West Side area -- with the number of low income families who were living there at the time the plan started.

Q Other than these 2,500 units of new construction for low income families, are there other low income families living in the West Side area?

A You mean in the Urban Renewal area?

Q In the Urban Renewal area.

A Well, I would have no way of knowing.

Q In other words, you don't know how many low income people currently reside in the West Side Urban Renewal Area?

A No, sir; I do not.

Q Doesn't that number have any effect on your judgment as to whether the West Side Urban Renewal Area will tip if there are more than 2,500 newly constructed low income units?

A Well, the low income families who might be living there over and above the 2,500, as I say, would not be part of the original plan. They would not be part of the covenant to which I referred, and I simply don't know whether there are any there -- I can't judge whether low income families choose to pay an extraordinary percentage of their rent to live in a Mitchell-Lama apartment and pay a very, very high percentage of their rent.

I can't judge if I see someone who looks to be a low rent family or a low rent income person walking down the street in the West Side Urban Renewal Area whether he lives in the area or on its immediate periphery. There isn't any way in which a sensible person could make that judgment.

So I would have to say that in my view the tipping point would be in this case directly related to the covenant as to the number of low rent units that will be part of the Urban Renewal plan and their disposition.

Q And that, of necessity, then makes completely irrelevant the current number of low income people residing in apartments and buildings which were not reconstructed, whether that number be a hundred thousand or twenty?

A I don't understand your remark.

Q Well, let's assume that there are currently one hundred thousand low income people residing in the area.

A In what area?

Q The West Side Urban Renewal Area.

A But there aren't a hundred thousand low income people residing there.

Q I thought you said you didn't know how many low income people resided there.

A Well, I have a rough idea of how many low income people are generally residing there. I can't specifically say to you nor could anybody specifically say to you that the only low income people living in the area are those living in the low rent units. That would be a very foolish remark I said to you I don't know how many low rent -- low income people are living in the middle income apartments, paying middle income rent and are deciding not to spend their limited income on other things. That's a decision that they have to make, and I don't know how many people moved into Mitchell-Lama apartments and turned out to have bad luck or bad fortune and find themselves now on welfare or supplemental assistance, so that in effect they are low income families. I have no way of judging.

Q But your testimony makes irrelevant whether or not there are ten thousand low income people living there or fifty thousand low income people living in the area or a hundred thousand low income people living in the area. Your

testimony is directed solely to this figure of 2,500 units of low income housing, regardless of the other low income people living there; is that correct?

A No; it is not -- excuse me -- it is not correct, sir. The West Side Urban Renewal Plan called for the total redevelopment of an area, part by demolition and reconstruction, part by conversion and rehabilitation and part by conservation. The total population was under some control, by virtue of the planning process. You can find in the planning documents precisely how many families are going to be living in the area. This is in the planning documents when the plan was finally approved.

There is no way -- that puts a limit on the flexibility of the number of low income people who can be living there, but I cannot say to you absolutely that there are only or that there will only be 2,500 low income families in the area when the plan is completed because I don't know what happens to people after they move into a building, nor do I know how people of limited income may choose to dispose of their income.

But the range of figures that you give between five thousand and a hundred thousand has obviously no relation to the total number of dwelling units, which was established by the plan as a matter of fact.

Q Well, let me ask you this:

Not all low income people residing in the West Side Urban Renewal Area are going to be residing in one of the new buildings constructed there, one of these 2,500 units; is that correct?

A No; I don't think that's correct. Let me put it to you this way: that the total number of units in the West Side Urban Renewal Area will be made up entirely of the new buildings, the rehabilitated buildings and those few buildings, largely on the Central Park frontage, which will be retained. Everything else -- there won't be anything else. So that in a sense that is what will be in the area.

Q 2,100 units of low income -- 2,500 units of low income --

A If you are talking about units of low income housing, the answer is 2,500. If you are talking about low income families, the answer is impossible to define precisely, because the fact that low income families may choose to live in apartments -- because of the fact that low income families may choose to live in apartments in which they pay an unusual percentage of their income as rent.

Q Maybe I am just terribly confused, but it would seem that if an area tips, it tips not only because we call a building a low income housing project. It is because of the

low income families living in the entire area, not what you would call a particular housing project; is that correct?

A I would say that -- I said to you before, it was a combination of the number of low income families and the disposition of those low income families.

Q Okay. How many low income families currently reside in the West Side Urban Renewal Area?

A I don't know.

Q Now, now knowing how many reside there, it is your expert testimony that if there was in excess of 2,500 units of new construction for low income families, the area will tip?

A It is my testimony, sir, that if the plan or covenant is broken by the construction of more low rent units in this area, the critical mass will have been reached that will cause a tipping or very likely cause a tipping of the area in question.

Q But you are plugging that excess over 2,500 on top of a number, some number of low income people, the amount of which you don't know. That's correct, isn't it?

A Well, I know that it is -- I know that 2,500 will be the number of low income people living in the low rent apartments, because as a matter of law, nobody whose income isn't low may live in a low rent apartment.

I don't know how many low income people may choose to live in other apartments, paying a disproportionate share of their income for rent. I don't think that is a critical matter. But if you are asking me to be precise about it, I am trying to be precise.

Q But the concern of tipping is the critical mass of low income families in a given area; is that correct?

A Income or immigration -- minority --

Q So in order to form an opinion as to whether any area in the City will tip, you have to know how many low income families reside there; isn't that correct?

A I have been saying to you that it related to two things -- or three things.

Q Excuse me. Will you answer my question yes or no?

A No.

Q You don't have to know how many people who live in an area -- you don't have to know how many to know when it is going to tip?

A You don't only have to know that.

Q But do you have to know that?

A Do I have to know that precisely?

Q Yes.

A The precise number of low income families?

Q The percentage coming into an area.

A Well, you were talking about the difference between five thousand and a hundred thousand. Now we are tlaking about a few percentage points.

Q I would like to have you give the Court your estimate of the number of low income families residing in the West Side Urban Renewal Area. How many are there?

A When it is totally completed, therewill be 2,500 plus -- plus a few. I don't know how many. I have no way of knowing how many. No one has any way of knowing how many.

Q Well, give me some expert range, whether it be twenty people or two thousand.

A 2,500 plus five per cent.

Q And suppose it goes down five per cent. Will it tip?

A I beg your pardon?

Q Suppose the number goes down five per cent. Will the area tip?

A What are we --

Q Suppose the number of low income families residing in the area decreases by five per cent.

A Well, we are talking about tipping in terms of the low income families going up, not coming down.

Q Suppose it goes down. What will happen? Will it tip?

A Tip in what way? I don't understand.

Q Tipping is when the introduction of a critical mass of minority or low income people in an area causes the majority to flee. Now, I am asking, what is the raw number of people of low income or minority groups of people going into that area which will cause it to tip? What is that number?

A You asked me if the number goes down by --

Q Suppose it goes down by five per cent.

A Well, how would it tip if it goes down?

Q The answer is, it won't tip if it goes down?

A Well, the only way it would tip to go down would be to tip -- to become a high income area. Is that what you are suggesting? Well, as a matter of law, it couldn't become a high income area, because high income people are not allowed to live in the low rental units, whereas low income people, if they can afford it -- not if they can afford it, but if they decide so to dispose of their income, they can live in the middle class apartments.

THE COURT: Suppose we take a short recess at this point, gentlemen.

(Recess, during which another matter was heard.)

Q Mr. Starr, how many units of low income housing are scheduled for Site 30 under the current plan?

A I don't remember.

Q If Site 30 is constructed as a low income housing project, how many units of low income housing will then exist within the West Side Renewal Area?

A I don't remember the exact number.

Q In other words, you don't know whether the construction of Site 30 as a low income housing project will in fact cause the West Side Urban Renewal Area to have more than 2,500 units of public housing; is that correct?

A Are you saying public housing or low rent housing?

Q Low rent. Low rent housing.

A The number will be exceeded: 2,500.

Q And then there will be currently existing more than 2,500 units of low rent housing in the West Side Urban Renewal Area?

A Including both the public housing and the low rent units within the 236 assisted housing and the leased public housing apartments within other structures and the various other rent supplement programs.

THE COURT: The total of which comes within the area of the plan?

THE WITNESS: Yes, sir.

Q And the low rent housing currently constructed, not on the drafting board or in the planning stage but

currently constructed, plus Site 30, will exceed 2,500 units of low rent housing, low income housing?

A Once again, I am talking about low rent housing in all types of construction, not just in public housing.

Q But I am talking, though, in terms of what is there built right now, plus Site 30.

A I am not precisely au courant with the public figures of completion. I don't know the exact figures of completion at this particular s age.

Q Well, let me ask you this:

Suppose one particular site is now scheduled for low income housing, but due to the vagaries of the economic world and the political world, that project is not completed or that project is abandoned. Would that -- That obviously would have some effect on the number 2,500, the total amount to be built; is that correct?

A Well, if a project were not built, that would affect the planned total. I am --

Q I see. Other than Site 30, are there some proposals for low income housing within the framework of the 2,500 figure you gave us which have not yet been constructed?

A I believe -- I believe there is one. I am not precisely sure.

Q Just one?

A I believe.

Q And do you know how many units are planned for that one not constructed?

A No, sir; I don't.

Q Well, let me ask you this. Let me ask you this, hypothetically:

Assume that the one that is planned for low income housing is not constructed, and Site 30 is constructed as a low income housing project. Will there be more than 2,500 units of low income housing in the West Side Urban Renewal Area?

A Including all the various types of low rent housing, yes, sir. I am sure there will.

Q And how many will there then be of units of low income housing?

A Of low income housing, I have been reluctant to come to a precise figure on this matter, but my estimate is that it will be in excess of 2,500 and fairly considerably in excess, including all the different kinds of low rent housing that is now available or has become available.

Q Could you give us your estimate of a figure, the number?

THE COURT: Just an approximation.

A An approximation? My guess would be somewhere

between -- around 2,800.

Q Now, that 2,800 --

A I want to amplify this. One reason why I am very hesitant to come to a figure is because of the practice which I alluded to in my previous testimony of putting welfare families in the middle income units of 236 subsidized buildings. Originally, these buildings were reported to be thirty per cent low income and seventy per cent middle, and in practice they have turned out to be eighty per cent low income, so that since I don't know whose rent comes from welfare and whose income comes from his own resources. I don't know how many low income families are living in these buildings.

Q What is a low income family?

A Well, that's a very good question. A low income family is a family whose income is low enough to qualify for entry into subsidized public housing.

Q Is that a strict dollar figure?

A Well, it depends -- it depends on the time the project was built and what the rent schedule for the specific project was. I might amplify this by saying that throughout when I use the terms "middle income housing" and "low income housing", I should make it clear that our laws are based -- define income by one's falling within the limits for housing

subsidizing in various ways.

In other words, we don't in the State of New York build middle income housing. We build subsidized housing, and if your income entitles you to live in that building, we say that you are a middle income family. We don't define middle income or low income in dollar figures.

Q You don't define low income in dollar figures?

A Can't. Not as far as housing is concerned.

Q Well, how does one measure whether a person is low income or middle income if we don't measure it by dollar figures?

A If his income is that which enables him to move into low income housing and which income is regulated as a multiple of rent, then he is a low income family for housing purposes, and if his income is too high, then he is not a low income person for housing purposes.

Q Then it is keyed to a certain dollar amount of income as to what you qualify for; is that right?

A At a particular time, in a particular place.

Q Within the West Side area, West Side Urban Renewal Area.

A Yes, sir.

Q In other words, let me ask you a hypothetical: Assume a man and his family is making five thousand

dollars a year income. Under current standards, what type of housing would he qualify for?

A Well, he would qualify for low income housing, I think, in most of the projects of the New York City Housing Authority.

am

Didn't I understand the testimony to be that that was

3 am

Q How much income can the man make above $5,000 before he becomes unqualified for his low income housing?

A Counselor, I am going to ask you not to make me answer that question. It is so complicated that it varies from project to project. It varies with family size, it varies as to whether we are talking about initial occupancy or initial admission and continued occupancy, that the question is impossible to answer.

Q Let me ask you this, then: Let us assume a hypothetical neighborhood. There are two low income housing projects, one built, let us say, ten years ago and one being built right now. You are saying it is quite possible under some complicated formula that the income limits may be different for a definition of low income for two different buildings?

A Thank you, sir. That is what I am saying.

Q In other words, some family might in fact be making $5,000 a year and qualify for low income, another man may be making $8,000 a year and qualify for low income?

A That is possible.

Q Howevef, as to the man making $8,000 qualifying for low income, he may only qualify for certain buildings currently in existence?

structure where they could be estimated as of the time

A I am not even sure that is a current regulation of the New York Cith Housing Authority but it certainly was at least up until several years ago.

Q Your testimony leaves me with some sort of a hodge-podge as to how we classify low income people.

A Then my testimony has been accurate.

Q Why does an income limitation on individuals cause other people to move out of the community? I will tell you why I ask that question. You testified earlier that if there are more than 2500 units of low income housing constructed in the area, then based upon the fears, prejudices and beliefs of the middle class living there they will move away. I am asking, why does an income limitation on the low income people cause the middle class to move away? Do you understnad my question?

A I understand your question. The answer is not a simple one.

We live in a social order in which income becomes a very important personal attribute in the minds of most Americans. Next to age and sex, it seems to me that income becomes a crucial determinate of the behavior pattern of Americans, the kind of recreation they engage in, the life style of the people who live there, who enjoy the income, the educational background and even if this isn't an

Q As a person moving into the community or thinking

objective factor, even if we can certainly point to people of very, very high cultureal attainments with very low income and people of very high income with very low culgural attainments, the fact is there are certain stereo types which largely control the way in which people feel and behave, which you referred to, I believe, as prejudicial. I think that is what you meant when you had prejudicial in mind.

So we have this one basic factor which is the tendency of Americans and people, I think, who live in almost any money economy, to categorize their neighborhood and themselves and their friends roughly by income.

And we have a second problem. And that is the problem of troubled difficult families who are caused to arise at first a spector of what middle class people consider to be anti-social behavior, and the spector has a certain basis in reality. Now, I want to be very clear as to what I am saying. I am not for a moment suggesting that low income people are problem families. I am not even suggesting that a large number of them are problem families. I am suggesting that there is more likely to be a connection between low income families, particularly families who are non-self supporting at a time of general prosperity, and the incidents of multi problem social behavior.

And that this is one of the spectors that arises, and it has a certain basis in reality.

Now, the New York City Public Housing Authority used to screen its families very carefully with respect to a number of problem characteristics. It has, for one reason or another, under pressure and in response to what I think is a genuine feeling of dissatisfaction with the whole nature of screening. I don't like the notion of screening out people from public housing because they may have personalities or characters or behavior patterns that are difficult and I can understand Authority's reluctance to do so, so it has abandoned that system. And there is an apparent large increase in public housing in New York City in the intake of families supported on public assistance and a very large increase in the percentage of families in low rent public housing who derive their income from welfare and there is throughout this city, and I think throughout many cities and many countries, a feeling in a time of general prosperity that welfare families tend to produce social problems in a proportion higher than their proportion in the general population. And I think these are the things that are involved here.

A third factor, which I think is very important, is the factor to which I have alluded again and again,

about people making investments in the area either in brownstone houses or in cooperative apartments in the belief that the area would be safe for them and that it would be safe for them physically and safe for them socially and safe for them in terms of their investment. They werefamilies who were willing, indeed wanted, to live in an area of diverse economics, but the feeling that they are not being protected by the city being willing to change a site that was not planned for public housing into low rent public housing at this timewould assist in aiding that fleeing.

And all of this, of course, is related to the question of the income level, because,after all, the income level determines so much of our attitudes in the United States and in other countries.

Q In considering whether any particular community will tip, is the test simply the number of low income people that will reside in the area or is the test more in terms of the type of problems that the low income people bring with them and the inability of community support facilities to cure those problems? Which is it, the raw numbers or simply the inability to correct socioeconomic ills?

A As I testified earlier, it is not only the raw numbers, but the raw numbers as measured against the

community services that we have described earlier. I think it is particularly true that the personality problems to which you just alluded and to which I alluded earlier are problems many of which nobody knows how to cure. It isn't just that we don't have adequate funding but these are problems beyond the reach of present techniques. The problems of crime, drug addiction, I would place in these categories.

Q But the ability of a particular community to absorb low income people without the community tipping, would you say that depends in part upon the quality of the school system, the quality of the hospitals, the quality of the Police Department, to help cure whatever socioeconomic ills the low income people have?

A I would say so emphatically, and I would say the whole purpose behind the West Side Urban Renewal Plan was to create precisely the kind of atmosphere and the kind of services and the kind of balanced community in which those services could be well provided.

Q In other words, whether or not 2500 units of low income families will cause the West Side to tip really depends upon the quality of the supporting community services in terms of job opportunities, schools, recreation areas, hospitals, police control, these types of services;

If I am wrong -- that with respect to Site 30 you would

isn't that correct?

A Well, that certainly is one of the factors. I will go back over it again.

I described three factors, I described the gross numbers, the extent of the community services and the morale and attitude of the people who might be persuaded by their own fears to leave. These are the three crucial factors in a tipping situation, and the numbers will vary tremendously from place to place.

Q The first factor is just simply raw numbers?

A That is correct.

Q And raw numbers is some arbitrary number like anybody making less than X dollars falls into a class of minority --

A That is not what I meant by raw numbers.

Q What did you mean by raw numbers?

A I thought you meant -- I meant the raw numbers being the number of people of the minority race or the low income group that come into an area, that's what I meant by raw numbers.

Q On the question of minority race, that's obviously by either color of one's skin or perhaps the accent of the individual, right?

A Yes, sir.

Q That is obviously quite easily. And you make some easy determination as to numbers based upon those observable characteristics, right?

A Yes, sir.

Q Now, the second, within that group then we have the question of low income, right?

A Yes, sir.

Q And you are telling me that, in all your testimony, that we have in effect a hodge-podge of regulations in housing such that there is no absolute figure which defines what a low income person is?

A I have told you that low income for housing purposes means income which enables you to live in housing subsidized by various different wards and there's no standard dollar value at any -- even at any particular point.

Q Okay. So we really can't say with accuracy what a low income person is until we get out all the regulations and look at all the housing projects to be built and then make some number determination, right?

A Well, that depends on how accurate you want to be, counselor.

Q Well, I am trying to be very accurate in determining what is going to cause this area to tip. You say one of the factors is low income, but you then tell me that low

A Well, under the former standards of the Housing income is determined by regulations, not by a sense of real reality.

A I didn't say anything about real reality, counselor.

Q Let me ask you this: It is quite possible for one individual who is frugal to live reasonably well on a $5,000 a year income and another individual not to live so well on a $5,000 a year income. One of those individuals may consider himself to be a low income person and the other may not, correct?

A Of course.

Q But whether or not in fact their low income for purposes of housing doesn't depend on how they feel or how they spend their money, but what some regulation says; is that correct?

A They have to spend enough money to pay the rent or get the money from the Department of Social Services. The rent has to be paid, so they aren't free to spend their money just any way they please.

Q But it depends on some regulation defining what low income is?

A Yes, and if a low income housing project is built, the people who live in it will be people of low income as then defined by law.

Q The other factor, you say, is the amount of,

I guess, crime and other social ills which can be associated predominantly with low income people; however you define the low income people?

A I don't like the word "predominantly" counselor. Let me say once again that the incidence of crime and social disturbance in most statistical tables that I have seen reveals itself to recur more often among people in low income categories and in those on public assistance than in the population as a whole, generally, yes.

Q And the final category you mention are other people's fears and prejudices. Those fears and prejudices do not depend upon the other elements which are measurable, do they?

A Oh, I would say they very much do.

Q You testified that it is your belief, based upon your view of the community, that the majority will move out if there are more than 2500 units of low income housing in the area; correct?

A That is not quite what I said, counselor.

Q Well, the area will tip?

A Yes, that is different from stating that the majority of the people will suddenly move out.

Q Will move out. Tipping means that the minority then becomes the majority, right?

A Yes, but --

Q Somebody's got to go, right?

A Yes. What I said was that when people move out for one reason or another, their apartments will not be rentable to others of the same socioeconomic group; that people will sell their house for whatever they can get that they would get less if they held on for another three, four to five years. And that these types of action would take place, I don't want to give you the idea that if this project were approved that on the following day the moving vans would arrive in the street and that people would flee from the building as though there were a plague. I am not suggesting that.

Q But it may over a period of ten years or something like that?

A Over a period of time it will tip.

Q The people moving out, let us say, for the sake of convenience, call it the white middle class --

A I object to that strenously --

Q What would you define as the majority?

A I would say the middle class because there are many who are not white.

Q Okay. The middle class would in part move out because of their fear concerning the number of low income

people residing in the area, correct?

A Well, as modified by what I have already said, yes.

Q And the number of low income people which would trigger their fears more than 2500 units of low income housing?

A Judged in the total concept or context which I have tried to establish by my testimony.

Q And people who could move into a house would also not move in because of this 2500 limitation, 2500 unit limitation; is that correct?

A Please ask that question a different way.

Q Your testimony was that an area tips because when a member of the majority moves out then a like member of the majority doesn't move in, so to have tipping, you then have to estimate what the beliefs will be of the majority people who might move in; and it is your opinion, I presume, that people who you don't even know the names or or know where they are living now, those people will not move in if there is more than 2500 units of low income housing?

A They will find the area less attractive to them.

Q And the reason they will find it less attractive under your earlier testimony is because the figure 2500 units is something which people relied upon; is that correct?

A Certainly the original group relied on it.

The second group may not know anything about the background, but by that time the apparent moving out, the apparent reputation of the neighborhood, will have become such as tc not make it attractive to people of the same socioeconomic class, those who leave.

Q Well, you say tipping takes a long time. Wouldn't it be more accurate to say that 2500 clients doesn't really govern whether a member of the majority will move into a house vacated by a member of the majority but whether there are, at the point they decide to move in or not to move in, there are adequate community support facilities in tems of schools, police, hospitals , parks, subways and jobs, right?

A Once again, I return to my statement that there are three major factors here, one is the raw mass of number, two is the nature --

Q I am talking about the 2500 units. Would that number then differentiate as time goes on?

A You seem to be trying to get me to change my --

THE COURT: No, no, he doesn't seem to be. If you are saying you would like to answer his question, I am going to uphold you. Let him finish. Go on.

A I am sorry, I have completely lost the trend of it.

THE COURT: Certainly, Mr. Land

Q Let me start again.

One of the three criteria you gave us about tipping was raw numbers, in this case it being 2500 units of low income housing, correct?

A Yes, sir.

Q Now, you also testified that tipping is caused because when a member of the majority moves out, a person of similar tastes and income and interest doesn't move into his house, right?

A Yes, sir.

Q Now, will the 2500 figure govern the new person's desire to move in or not to move in?

A The new person probably wouldn't even know about whether it is --

THE COURT: But assume that he does know. That's the point. Assume that he knows, then what?

A If he knows, it certainly will have an effect on the attractiveness of the area.

THE COURT: That is what you said before.

THE WITNESS: Thank you, your Honor.

Q Just if he knows the 2500 was some figure spoken about at one point, that will have some affect on him?

A Yes, sir.

THE COURT: Excuse me. Some figure spoken of.

Council meeting or a Board of Estimate --

Didn't I understand the testimony to be that that was the figure that the Board of Estimate set?

THE WITNESS: Yes, sir.

THE COURT: Well, that is for everybody, the whole world is on notice of that?

MR. LAND: There was some question, as it developed in the trial, as to whether there was ever a 2500 figure set.

THE COURT: That is difficult. That I don't know. Actually, your testimony is that the 2500 adopted by the Board of Estimate, as you maintain, was without basis and that you declaim; you say that it was a figure that was unenlightened and, as you put it, you felt that the number was excessive; that your own figure, based on your own experience, was considerably less?

THE WITNESS: I think the whole nature and pattern of investment in the area, the type of housing that was enabled to be built there and the amount of tax revenue received by the city is much less than it would have been if the original figure had been adopted.

THE COURT: Now that I have interrupted you, let me pursue another point without interrupting too much.

You spoke of community services.

I presume that the community services took on a definite

A My best recollection is that the Mayor called on

structure where they could be estimated as of the time thatthis whole project was undertaken; am I right or wrong on that?

THE WITNESS: You are right, sir.

THE COURT: Was it anticipated that there would be orther community services that would lend a hand in the total orderliness of the community?

THE WITNESS: Well, there were a number of -- at least one settlement house that sponsored a housing project and provides facilities. The public housing project, I believe, contains a community center which is operated by others, and the area -- there was a program called Phoenix, which was deliberately engineered to provide social services with people in the early stages of this whole development.

THE COURT: All right.

Now, is it your testimony, sir, that even conceding that the best of intentions the hallmark of these community service institutions, they can be overridden and their ability to function can be entirely curtailed as a result of too much demand?

THE WITNESS: Yes, sir. And there can be demand for services which nobody knows how to supply.

THE COURT: All right. Please proceed.

the point I gather -- and I may be corrected; they will

Q As a person moving into the community or thinking about moving into the community, a middle class person, part of his evaluation of whether to move in or not, would it depend on his knowledge of the 2500 figure?

A Well, that is very hypothetical. I would assume that his feeling about the number of public housing developments in this area would have some effect on the attraction of the area.

Q Let me ask you this: In reality, if a person is thinking about moving into the community, wouldn't they really be interested in looking at the street in which they plan to move onto and the surrounding blocks to see what the schools are like, to see what the parks are like, to see how well the police is functiong and the devil with the number, 2500, 2800 --

THE COURT: All right. You made your question clear. What is your answer?

A My answer is no.

THE COURT: Next question.

Q So they would not look at these other factors?

A That wasn't your question, as I understood it. They certainly wouldn't only be guided by the streets and the schools. The population is a very important factor in the selection of housing sites by people.

that in respect to the current West Side Urban Renewal plan,

THE COURT: Next question.

Q Of the three different elements which cause or may cause tipping in the west side area, being raw numbers -- what were your three again? Your three factors.

A Raw numbers, community services in the broadest sense and the frame of mind or state of mind of the majority group.

Q As to those three factors, which in your opinion is the most important to cause tipping?

A I can't answer that question because I think they all three would work simultaneously.

THE COURT: Next question.

Q Mr. Starr, did you give a statement to the New York City Board of Estimate at the time they were considering the use of Site 30?

A Yes, sir, I did, on behalf of the city --

THE COURT: You don't have to embellish it. The answer is yes. Next question. Just merely did you give a statement? That is all he asked. He didn't ask you what statement. All right.

Q In respect to Site 30, did you make this statement to the Board of Estimate --

THE COURT: Can you give us the date, please, so that there will be no question, we wouldn't be

Q I refer you to the second page of that article and

quibbling and spending a half hour as to whether he said it on one occasion and not on another?

Q In October of 1971, do you recall giving testimony to the Board of Estimate?

A I don't remember the date but I remember the occasion.

Q Did you make this statement to the Board of Estimate and I quote:

"I would like to say that we would conditionally agree with public housing if public housing were administered the way it was administered two years ago when there were reasonable, in my view, admission standards to public housing, and when the Housing Authority had the ability which it lost under what I take to be a few adverse decisions in the Court of Appeals to dismiss those tenants who had proven themselves to be a hazard to their neighbors and a detriment to the quality of the life within the project itself."

A Absolutely correct. I didn't say --

THE COURT: Please, this is a courtroom. I have allowed expansion whenever I felt the law permits it. But don't add on.

THE WITNESS: I am sorry, your Honor.

THE COURT: Next question.

witness, I am going to call on you, as a direction from

Q You made that statement?

A Yes, sir.

THE COURT: He says yes.

see in the 236 apartment houses, the sentiment in the neigh-

Q I understand by that statement -- and correct me if I am wrong -- that with respect to Site 30 you would favor low income housing, provided there is a means made available to screen admission standards and to evict tenants who bring with them overwhelming problems which are dangerous and hazardous to the rest of the community?

A That would apply not only to the project in question but to all the projects operated by the New York City Housing Authority in the West Side Urban Renewal Area.

Q If there were a procedure to screen tenants and to effect evications, and if Site 30 was built as a low income housing project, would the West Side area tip?

A I think not, but it would necessitate, first of all, there is no such policy, and, secondly, it would necessitate changes in the administration, not only of this project and the tenant selection, not only of this project but of the other low income public housing projects on the West Side.

Q You say that such a system does not exist. Assume it does exist. Your testimony is that construction of a low income housing project on Site 30 would not cause the area to tip?

A If such a system existed applicable to all the public housing in the area, I don't think the area would

Q What part of Springfield Gardens has tipped?

tip.

Q Why?

A I think there would be a very different feeling. My Category 3, the feeling of the people, of the majority group living in the area would be very considerably different about the nature of the area, the way it has been tending and of the plan and of the city's determination to help and support their view of what this neighborhood should be like.

Q Such a screening process would not affect your Categories 1 and 2, raw numbers or community support facilities?

A It would certainly affect 2 very radically, because it would make altogether different demands on the supporting services in the community.

Q It would not actually change the --

A Please -- I think the question of whether supporting services change or not has a great deal to do with how many people demand its use, require its use.

Q The raw numbers would not change if we had a screening process?

A Would not.

THE COURT: You testified there would be a change in demand on community support facilities?

THE WITNESS: Yes.

Many of the people who were afraid of more low income hous-

Q Could you explain to us what some of the more significant changes in demand would be?

A Well, under the former standards of the Housing Authority, tenants could be evicted for, say, vandalism, for crimes or offenses that might otherwise come to the attention of the police. Tenants with intense personal problems requiring counseling by the local -- let's say the Riverside Community Center, whose problems in some sense might otherwise overwhelm that center, would be not permitted to remain there, and the ability of these centers, the ability of the police, the ability of the drug addiction services to cope with the problems presented to them would be correspondingly greater.

Q Finally, such a screening program would, in your testimony, change the prejudices of the people in the area towards low income housing units?

A That would be a slow process, but I think that that is what would happen.

THE COURT: In essence, the reaction of those more fortunate economically would be to look upon with a certain degree of satisfaction and less apprehension if there was a studied inquiry into the ability not only to utilize the low income units in orderly fashion but that the inquiry would be so all-embrasive as to diminish the possibility

or the likelihood of these other detrimental factors of which you have spoken; is that what you are saying?

THE WITNESS: Yes, sir. You said it better.

THE COURT: No. I just want to understand you.

Q To a large measure, the result of non-tipping as a result of the screening process would depend upon the type of screening process established, whether it was a very rigorous or whether it was somewhat loose, and the elements involved in what qualifies a person for eviction or not, would it not?

A Yes.

Q And you mentioned, for example, a screening program which would, let us say, exclude people who are habitual criminals?

A Well, not only that.

Q But assuming there was a screening process, it would exclude habitual criminals. Would the problem then become a definition of what is habitual?

A I think the Housing Authority still continues to try not to admit known habitual criminals into its projects. It used to have a list of twenty-nine potential personal problems, I believe it was called, and against which it screened its applicants.

THE COURT: Was that a fairly good approach?

THE WITNESS: I thought it was a very good approach. It came under very heavy fire, for the reasons I indicated, and they abandoned it.

THE COURT: But if that same system were to materialize, that same system of which you spoke approvingly, if that were to be reinstated, then what would your position be?

THE WITNESS: Well, if it were coupled with the power of the Authority to get rid of tenants who had broken its rules, then my position would be as stated in the testimony that I made before the Board of Estimate.

THE COURT: All right.

Q This statement you made was in October of 1971; is that correct?

A Yes.

Q In January of 1972, did you make this statement --

THE COURT: Before whom?

MR. LAND: I am not sure before whom. Just the statement as recorded.

Q (Continuing) About Site 30 in the West S[illegible] Urban Renewal Area and the City Housing & Planning Counsel has a very simple position. We believe that this site was originally designed years ago for fully taxpaying housing. This was part of the notion that the West Side is one of the most

desirable areas in the city and that people who have a measure of housing choice should be encouraged to live there. At the same time, we felt that some low income housing should be provided in the interest of general fairness and in the hope of proving that with proper planning, people of widely disparate incomes could live happily in the same general area.

"Over the years, the proposals to build fully tax-paying housing on this site were dropped in favor of a limited-profit housing, which would be more or less for middle income people. We supported that. It then became clear that because of the high rise in construction costs and the high interest rates, a limited-profit housing company would require much higher rentals than originally planned.

"We still favor the limited-profit housing on the grounds that some higher income people are necessary to make the community function as it should. However, there is a very real possibility that neither the State or the City, which must lend the money to make a limited-profit housing company possible, will be willing to lend money on this particular site, because there is a large number of low income families living in that area now.

"If this is the case, and if private industry will not build fully tampaying housing then we feel that the site

should be developed with public housing."

Did you make that statement?

A I don't remember making the statement, but I certainly could well have made the statement; and, of course, I am not sure whether that is the full statement or whether it went into the same comments about the public housing screening and eviction process which I described before the Board of Estimate. I don't know what you are reading from.

Q Do you recall making a statement like the one I read?

THE COURT: You say you do not recall --

THE WITNESS: I do not recall making that statement. I don't know before what audience I made it, and I don't know whether that is the full statement, but I would subscribe to every word in that statement, with the addition of the previous testimony.

THE COURT: All right.

Q In other words, it is your testimony that you would favor low rent housing on Site 30, providing that there is an appropriate screening process --

A Screening and eviction.

Q Screening and eviction process.

THE COURT: All right.

MR. LAND: Excuse me for one moment, your Honor.

THE COURT: Certainly, Mr. Land.

MR. LAND: My cross-examination will be probably another half hour, your Honor.

Q Mr. Starr, your testimony to a large measure has dealt with the figure of 2,500 units of low income housing for the Upper West Side Renewal Area. When was that figure established?

A It was established, to the best of my recollection, at the hearing before the Board of estimate at which the plan was approved in -- my guess is 1962.

Q And in 1962 it is your testimony that at that time the Board of Estimate approved 2,500 units of --

A Oh, no.

Q What is your testimony?

A My testimony is that the Board of Estimate approved and voted on a plan and that before the vote took place, the Mayor of the City of New York, Mr. Robert Wagner, engaged in colloquy with Mr. Milton Mollen at the hearing of the Board of Estimate in which they agreed and went on the record that when the plan was executed there would be 2,500 low rent units in the plan and that this number, 2,500 units, has been referred to again and again by City officials in describing the project.

Q The genesis of 2,500 units is, you say, a City

Council meeting or a Board of Estimate --

A Board of Estimate.

Q A Board of Estimate meeting in 1962?

A I cannot remember whether it is '62 or '61. Even may be '63. But it was the approval of the Urban Renewal plan --

THE COURT: I am sorry to interrupt you. I was hoping, Mr. Starr, since you knew when you were last here, that counsel were somewhat far from adopting your recollection, that in the interim, knowing that today we would continue, you would have made an inquiry by consulting your records or having the matter looked up, which is a course that you have undoubtedly pursued over your years.

You have greater familiarity than most of us as to how to get hold of something that took place before the Board of Estimate. I presume my hopes have been dashed by your non-performance.

THE WITNESS: I apologize, your Honor.

THE COURT: That is all right.

Q And this figure of 2,500 units, to use a word, it was sort of a colloquy?

A There was a colloquy at the Board, as I remember it. I was there.

Q Who made what statement about 2,500 units?

population decreased by 18 per cent or by twelve per cent,

A My best recollection is that the Mayor called on Mr. Milton Mollen, the chairman of the Housing Redevelopment Board, to describe how 2,500 units of low rent housing would be provided in the West Side Urban Renewal Area.

THE COURT: Mr. Land, I am not going to spend a lot of time trying to unearth this or getting an approach to it by the witness' recollection. I am going to direct that it be either produced or not produced, and that is the end of it by either side. I don't care who produces it. It has to be brought into the record as to whether or not such an event took place, whether the witness' memory is correct. But to spend time trying to develop it this way, I think, would be a fruitless undertaking.

Won't you please think of the alternative that I have suggested?

MR. LAND: Let me state this, your Honor: The Government's concern is that to a large measure Mr. Starr's testimony is based upon this 2,500-unit figure.

THE COURT: That is right.

MR. LAND: I believe there is, as the facts will demonstrate, that the 2,500-unit figure was not an integral part of the plan, nor something which was specifically planned as the ultimate number of people to live there.

THE COURT: I gather that that is conceded, but

Q Would you say that, in part, perhaps all of New

the point I gather -- and I may be corrected; they will correct me if I am in error -- but as I gather it, this was a side comment which is a happening that takes place all the time, on and off the record. There was a side comment by the Mayor to an official who was concerned with the low income housing, who undoubtedly was worried about low income, as they both were, about low income units, and the Mayor said, as I gather it, or in the course of this conversation it looked as though both gentlemen were in agreement that 2,500 low income units should be the top figure.

Am I right so far?

THE WITNESS: That's what I recollect.

THE COURT: Then the witness goes on and says that that became common gossip. Everybody was talking about it who was in housing, and one passed it on to the other, and it came out of the mouths of people as though it had been adopted by what you would call a commitment in a plan. There was no such commitment, but --

MR. LAND THAT IS WHAT I want to establish.

THE COURT: Is that the size of it?

THE WITNESS: That is the size of it from my point of view.

THE COURT: All right.

Q In 1961 or '62, when this colloquy took place, was

problem families in Co-op City?

that in respect to the current West Side Urban Renewal plan, the fourth revision?

A It was the current plan and included the immediate periphery of the West Side area.

Q Is it your understanding that the 2,500 units spoken of in 1962 were to be included solely within the geographical boundary --

A My best recollection is that it included not only the area but immediately or nearby ajacent areas, right in the vicinity of the project -- of the Urban Renewal area.

That's my best recollection.

Q If I know the geography, it could not be to the east, because we have the park.

A Right.

Q Probably would not be to the west, since that is already built --

A I think there was on Amsterdam Avenue, and my recollection is vague.

Q Would the balance be north and south or one or the other?

A Probably the north, primarily.

Q Refer to Government's Exhibit -- your article on "Lesson in Forest Hills".

THE COURT: That is C in evidence.

Q I refer you to the second page of that article and to the right hand side of the page beginning with the word "Economically".

MR. MORRIS: Which paragraph is that?

MR. LAND: Right there.

Q (Continuing) I would like to read this and see if it is correct.

"Economically, too, the West Side is heterogeneous. Its major urban renewal project, which sought to replace the Columbus Avenue tenements with modern apartment houses and to enable the side street row houses to revert to single-family occupancy, included more than 2,500 low rent public housing units in its final plans."

A My recollection is that the precise number that was talked of at the meeting, including the units within the West Side area itself and those outside the area, came to a few more than 2,500. There were some precise numbers given at the hearing.

Q But this would be in the range of that five per cent range you mentioned earlier?

A Yes, sir.

Q So was another 125 units -- What is 25 per cent? Another 125 units, maybe?

A I don't remember the exact figure.

A No, I don't know.

THE COURT: Mr. Morris, since this is your witness, I am going to call on you, as a direction from the Court, that you produce, some time in the future -- I am not asking you to do it today -- the record of the Board of Estimate which reflects in essence what the witness has testified to.

MR. MORRIS: I have the papers right here, your Honor.

THE COURT: Then you will develop it on redirect.

MR. MORRIS: I will develop it on redirect.

THE COURT: Thank you.

Q Finally, Mr. Starr, in your earlier testimony, two weeks ago, it was to the effect that the West Side Urban Renewal Area is sui generis to almost the entire United States; is that correct?

A That's correct.

Q If that is so, does your evaluation of tipping, measured by other communities whichhave tipped -- does that make your evaluation subject to some doubt because we are dealing with an area which is sui generis?

A Mr. Land, any prediction of the future is subject to doubt. I can't sit here with certainty -- I am not an astrologer. But having watched the development of that area, the change in the kind of investment pattern that has

taken place, the change in the occupancy pattern that I see in the 236 apartment houses, the sentiment in the neighborhood, I am as sure as one can be about any event in the future that the designation of this and the construction of a public housing project under present-day circumstances will cause a tipping in this area.

Q Your opinion, then, is based exclusively on statements people made to you about their fears and prejudices, on your understanding of the occupancy of certain buildings which you just mentioned, even though you earlier testified you don't know the numbers, and your understanding of what the community supportive facilities are and not on what has happened in other areas of the city and of the country?

A It is hard to truly separate my opinion-forming process from my experiences generally and my specific experience in this area. They are conjointed, and I tried to modify my general impressions of tipping generally with the specific things that I have observed in this particular area.

Q What other communities have tipped?

A I have just -- Last week I just drove through South Ozone Park. South Ozone Park, in the Southern part of Queens, has tipped.

I have driven through parts of Crown Heights which have tipped. I have driven through sections in Springfield Gardens, in South Jamaica, which have tipped.

Q Are those subways adequate to service that area

I have seen quite a number of these areas.

Q What part of Springfield Gardens has tipped?

A I don't know the story in detail, but my guess is --

Q I don't want a guess. I want your personal knowledge of what made it tip.

A I can't tell you.

Q What made Brownsville tip? You --

A I did not say I drove through there.

Q Where did you drive?

A South Ozone Park.

Q What made that tip?

A Because the community lacked supportive services. It had a lower middle class population that had very strong fears of an invasion by black people, and people fled from South Ozone Park.

Blockbusting was among the experience, and it tipped, I think, for those reasons.

Q A sense of fear about black people moving in; right?

A In that particular case, it was very strong, I imagine.

Q Does tipping on the West Side area have anything to do with black people moving in?

A I don't think so. I think that people who were

afraid of blacks would not have moved into that area. Many of the people who were afraid of more low income housing are themselves black. I have told you before that I think socio-economic factors are more important.

Q What other areas of the country have tipped but not for reasons of a fear of blacks moving in?

A We could begin at one end of this country and the other. We could talk about Boston, the nice Back Bay areas of Boston; the middle class areas of Boston that have become low income areas. We could go to New Haven --

Q All right. The Back Bay areas of Boston --

THE COURT: No. I want him to answer. I am sorry. That is helpful to the Court. I want to understand that.

You go ahead.

A We can go to New Haven, the Dixwell Avenue area, when I was an undergraduate, was a white area, a middle class area, which became a black low income area.

I could take you to areas on the West Side, let's say the West Side before the West Side Urban Renewal Area. The area where I was brought up, on 69th Street, which was once a middle class brownstone area, tipped and became a rooming house area, where there was no question of whether these were -- these were black people moving in. It was a

rooming house next door, and people who owned a private house did not want to live next door to a rooming house, so they moved. So the whole block moved. Section after Section of the United States has changed because of the socio-economic change in a part which spread to the rest of an area.

The whole concept of filtering down housing whereby housing that was originally built for the middle class or even the upper middle class ends up occupied by low income families, that whole process results from the fact that the socio-economic fears of the people living in an area are such as to drive them out. They are sure their property will be worth less tomorrow than it is worth today, so they sell it today. And this has happened in every city of the United States.

What is so perplexing about the West Side is the fear that this should happen in spite of the vast expenditure of public funds that were put in there for precisely the purpose of using to its best advantage this very desirable piece of the urban center.

Q What other communities which have tipped have, prior to tipping, received a similar massive infusion of private and public investment as the West Side?

A Well, you asked me that last time, and we agreed,

you and I, that there had not been any, that this, in a sense, is sui generis, as you just said a moment ago.

Q What bothers me is to form an expert opinion when there is nothing reasonably similar to the West Side area which has tipped.

Point to something of similar precedential value with facts and figures saying, "Area A was similar, because it had this type of racial make-up and income make-up, types of apartments, and that tipped." Say that pattern is going to happen over here if we continue with low income housing, P housing.

Is there any area like that you can guide us on?

A I can only point to very many upper income areas, Society Hill in Philadelphia, which tipped and became a low income area and has been resurrected now by urban renewal. I can refer you to --

Q I don't mean to interrupt, but those areas which tipped, though, did not have the predicate of a massive infusion of private and public funds, high multi-story apartments and brownstones side by side. They were mostly single-family houses separated by lawns and trees; right?

A I can only reply to you that I have tried to apply my best judgment to the prospects of the West Side after having been associated with it for some time, although I have

no interest in it whatever of a financial nature.

Based on what I have seen happen in as many cases as possible in the United States, if what you suggest to me is correct, we should not have gone into the West Side in the first place, with vast infusions of money, because we had no example of how this might work elsewhere. It was the first such project. One had to take risks to do this project. One had to take political risks when one tried to make a peaceful solution of the balance of low and moderate income housing, and I, on the basis of what has happened, have just simply tried to apply my judgment to what I think will happen in the future if certain things are done.

Q Part of that judgment is based on raw facts, this 2,500-unit figure; right? Other figures in terms of the total number of low income people living there, which figure you do not know; is that correct?

A I told you, one cannot know the precise number.

Q How many public schools are located -- public high schools, are located in the West Side Urban Renewal Area?

A I don't think there is any high school.

Q How about private elementary schools?

A Private elementary schools? There is a very considerable supply of private elementary schools, but I don't have the figure at my fingertips. I could name some

if you want.

Q What is the total population of what you would consider the community of the West Side area which encompasses this urban renewal area?

A Well, when you talk about a community area, do you mean from 59th Street to 125th --

Q I want you to define it in terms of your expert opinion.

A I did not use the word "community", sir. I don't use that word, because of its very looseness. I don't use the word to define an area, because it is such a loose word and subject to such gross misconstruction.

If you are asking me how many people lived between 59th Street and 125th Street, I would have to take a guess.

Q Let me ask you this:

Assume that Site 30 became low income, and there is not the screening process, and there is the tipping, tipping does develop as you see it. Where will the tipping occur?

A I think the tipping will occur in the co-ops, in the apartment houses and in the side street brownstone houses, in which middle income families and upper middle income families are living. Those are the units which, when vacated, will not be filled by people of the same

socio-economic level.

Q What geographical area is that?

A The area that we are talking about is 87th to 97th Streets, between Amsterdam Avenue and the park.

THE COURT: So your answer is the entire area would be affected by it?

THE WITNESS: Yes, sir.

Q But that is geographically exactly the West Side Urban Renewal Area; is that correct?

A I thought that is what we were talking about.

Q It will spill over into -- further west?

A Mr. Rand, it is not -- we haven't discussed at all other blocks between Central Park West and Amsterdam Avenue that are not part of the urban renewal area, and the fact is that those blocks won't tip, because they are already in, I think, grossly overcrowded and very bad condition, and it is precisely to change those conditions that the West Side Urban Renewal Area was started.

So that the effect on -- you can't ask me about the effect in those blocks, or, at least, I can't answer about the effect in other, similar blocks near the park, because those blocks have nowhere to go. They can't tip. They tipped years ago.

Q Are you familiar, generally, with recent popula-

tion changes within the City of New York?

A Generally. I haven't seen the census data or the raw data.

Q Do you know whether there is a net inward or outward migration of whites within the City of New York between 1960 and 1970?

A My guess is that there is a net outward migration, but I would want to consult the census figures. I have some data in my briefcase.

Q Why don't you just get it?

A This doesn't contain comparative data, but it gives the 1970 census data on population.

Q You are an expert on public housing, and you should have some working knowledge of rather significant census figures.

A It is my very strong impression that there is a white exodus and a non-white inward migration that has been continuing since the last decade in the City of New York.

Q Do you know about what the change of percentage is in terms of the exodus and egress of white and non-white?

A I don't know. I wouldn't dare to express it as a percentage. I have used the figures again and again, but they don't stick in my mind, and if you ask me to sit here and remember whether it was -- when it was that the white

population decreased by 18 per cent or by twelve per cent, I would just be guessing. The figures are so easily ascertainable that I don't try to remember.

Q It is your opinion that the white population is decreasing?

A Right.

Q The population of persons other than white is increasing?

A Yes, sir.

Q Do you know why?

A Do I know why? Yes.

Q Why?

A It is part of a national trend, in which white families, having higher economic mobility and higher incomes, have been moving to the suburbs, and black families, having less economic choice, have been moving from the South to the central cities.

The cities have historically performed the educational function of training displaced rural workers for a spot, a place in an industrialized and commercial society. That is what the cities have done. That is what New York is doing, or has been doing.

It is a great deal harder today for the cities to perform this function, by reason of the race problem.

Q Would you say that, in part, perhaps all of New York City is tipping?

A No. I don't think all of New York City is tipping at all.

Q New York City as a whole is tipping?

A I think there are a great many areas in New York City which are showing an increase in non-white population but which are not tipping. Tipping is the act which I described as a grossly accelerated shift of population when a certain critical mass has been achieved under certain conditions, under certain circumstances of social services and certain circumstances of social psychology.

Q What areas of the city are you referring to that have this increase of non-white population but are not tipping?

A Well, let's take Co-op City, for example. Co-op City is a recent development. Its black, its non-white population has gone up to 18 per cent. It is not tipping. White people move out; other white people move in. Sometimes black people move in when white people move out. Sometimes white people move in when black people move out. It couldn't -- it doesn't seem to me to be tipping. On the other hand, let's take Rochdale Village --

Q Is there a screening process up there to root out

before a jury.

problem families in Co-op City?

A Well, they certainly check one's background and credentials and, of course, it is not a low-income project.

THE COURT: Gentlemen, there are a couple of things I must do, and you undoubtedly must do, too, in other matters as well.

We will go on as quickly as we can. Let us recess until two-fifteen. I have a court matter here at two, and tomorrow, there being another court matter in the morning, I am giving you this as a courtesy so that you can make use of the information this afternoon if you want.

Tomorrow, because of another court matter, we start at ten-thirty, on the dot, and today we will sit until five, and tomorrow we will sit until five or as close to is as you wish.

(A luncheon recess was taken.)

projects have been built in the West Side Urban Renewal

AFTERNOON SESSION

2:15 p.m.

(In open court.)

R O G E R S T A R R, resumed.

CROSS EXAMINATION CONTINUED

BY MR. LAND:

THE COURT: Would you kindly proceed, Mr. Land.

MR. LAND: Yes, your Honor.

Q Mr. Starr, in connection with your expert opinion, as to the possibility of tipping in the West Side Urban Renewal area, did you make any factual study in respect to the three elements which in your opinion would cause tipping?

A No special study, no

Q How many people, middle class people, currently residing in the West Side Urban Renewal area have told you that they will move if there are more than 2500 units of low income housing in the area?

A None.

Q Do you know whether or not the existing community services and facilities are adequate to support 2500 units of low income housing in the West Side Urban Renewal area?

A No, I don't know.

Q Do you know what the total population of the West Side Urban Renewal area is?

A Not without refreshing my recollection.

Q Did youknow the figure at the time you made your expert opinions?

A I had a rough idea of what the figure was.

Q Do you recall what the rough figure is?

A My recollection is that there were 8800 units totally involved in the West Side Urban Renewalarea.

Q That is not my question. The total number, the total population, of the West Side Urban Renewal area, do you know what the total population is?

A Sir, since I have not -- I haven't looked at the census figures, the only way I can calculate it is by multiplying the number of dwelling units by the average number of people per dwelling unit.

Q Did you do this prior to the time you formed the expert opinions?

A Yes, I did, in rough form.

THE COURT: Would you suffer an interruption? I am sorry to do it to you.

(Pause.)

Q Did you know, prior to the time you formed your

A No, sir.

expert opinion as to tipping, what the total population was of the Upper West Side Urban Renewal area?

A No, nobody knew. Nobody knows.

Q Youdon't know?

A No, sir.

Q Do you know the number of public schools serving the area?

A No, I don't.

Q Do you know the number of hospitals serving the area?

A No, sir.

Q Do you know the number of Fire Departments serving the area?

A No, sir.

Q Do you know the number of police stations serving the area?

A No, sir.

Q Do you know what the crime rate is in the area?

A No, sir.

Q Do you know what the unemployment rate is in the area?

A No, sir.

Q Do you know how many subways service the area?

A Yes, sir.

Q How many subways service the area?

financed by the State, but all subject to State law.

A Two subways service the area.

Q Are those subways adequate to service that area in your opinion?

A In my opinion, they are.

Q It is not the problem youhad with the Forest Hills area where there was not adequate transportation?

A The subways are within one block -- at the most two blocks -- to the east from the furthest point and three blocks to the west from the furthest point.

Q Do you know whether there has been any recent turn over of middle income housing more than what would be considered normal but for a possibility of tipping?

A Well, I do know that a project that was aided by 236 benefits apparently had difficulty in filling the middle income sections of the building with the result that welfare clients were admitted and I understand that 80 per cent of the building now consists of people of low income.

Q Do you know whether or not the schools serving the upper West Side area are newer and less crowded than other schools in the city?

A I believe they are less crowded.

Q Do you know the ratio of white to non-white living in the West Side Urban Renewal area?

Area which will be low income or for low income tenants if

A No, sir, I don't.

Q Did you ever know that in forming your expert opinion?

A I knew that originally, and I did not know it at any time subsequent, as the population changes. I didn't know it and I didn't know it in formulating my opinion.

Q Did you form your expert opinion as to tipping without knowing the number of fire departments, the number of schools, the number of hospitals, the ratio of white to non-white population, the rate of crime in the area; did you form your opinion without knowing these facts?

A I already told you I did.

Q Mr. Starr, if no one has told you they were moved, no middle class person has told you that they were moved, if there are more than 2500 units of low income housing, how does that become one of your factors?

A By the letters that have been addressed to me, or I should say the letters or the publications that have been sent to me by people expressing their fear of the future of the west side, by attending meetings at which peoplerose and spoke about their sense of danger on the west side, by attending public hearings at which people came up to me and said that the west side area was not turning out to be the kind of place it was, and that they felt themselves to be menaced.

I didn't hear anybody threaten to move, nor would I have paid particular attention if somebody had threatened to move, because I heard that kind of threat in City Hall all the time and I discount them totally.

I try to judge people's real frame of mind, not the threats that they make about moving. I have heard people in the East Bronx say they will move if public housing is erected there and I find that they didn't move. I can give you many other cases where I have had people threaten to move and did not move.

I try, when I form an opinion about the future of the area, to judge by the expressions, by the continuing agitation at the momentary objection to a particular proposal, by the organizations that are founded, by the kind of support that I believe those organizations possess in the area, and by assessments of that kind rather than by the threat that I will move if such and such happens.

Q Because you have testified you don't have any factual data as to the community's supporting facilities, would you say that your expert opinion is based primarily upon what the people have told you?

A I didn't testify to the effect that I had no knowledge of the community supporting facilities. You asked me questions about police stations, fire stations and

hospitals, transportation, and schools. I testified that I had no specific information with regard to them. I didn't testify that I didn't know about social services generally.

I testfied about settlement houses, about the Goddard Riverside House, and I testified about the community center and the public houseing project, and if you had asked me further questions about my views as to a community center in public housing projects, their necessity in public housing projects, I would have been happy to testify on that subject as well.

Q And as an expert in housing, don't you feel that it is important to know exactly the number of schools and their ability to provide a decent education, the number of hospitals and their ability to provide a decent education, the number of hospitals and their ability to perform medical services, the number of police in the area and their ability to do their job, the number of fire departments in the area and their ability to service a community, to know these facts before you form an expert opinion as to whether middle class people will depart from an area if there is an increase in low income people?

A I don't think that the information you are asking for or thatyou are suggesting that I shoudl have requires

any knowledge other than the general plan and the fact that the density of housing is or is not in conformity with the zoning resolution of the City of New York.

The original plan for the Urban Renewal area stated that there were adequate services for the predicted population. The schools in the area, I think, were in large part, not I believe entirely, rebuilt. There are new school in the area. I assume on the basis of the general plan, which I am not passing on, I am not passing on the number of dwelling units that are to be constructed in the area, provided for adequate services for a population of the kind that you are talking about, that is, services of the kind you are talking about: Fire, school, police and the other basic city services.

Q What specific facts and statistics did you rely upon in forming your expert opinions?

A First, I relied on the factual information as to the number of dwelling units, the distribution of subsidies, the general distribution of apartments between low and moderate income apartment housing, the facts with respect to the disappearance from the plan of fully tax paying housing because of the difficulty of getting investors to believe that people would move into fully tax paying apartment houses and pay the rents under the circumstances,

the gradual increase of subsidization of housing throughout the area, the increased activity on the part of community organizations or local organizations which objected to the introduction of low rent -- low income families beyond the figure that had been stipulated of 2500 people, the attitude of those people, as I learned them, in the way that I have already described, and my personal impressions of walking through the area, attending meetings in the area, attending public meetings at which this question and these similar questions have been discussed.

Q Do yo have the statistics on the housing density and the make-up of rent supplements you mentioned?

A Well, I do know that one building --

Q Do you have them in court here?

A No, I haven't.

Q Do you have a list of the meetings you attended?

A No, sir, I didn't make a list.

Q Over how long a period of time did you attend these meetings which formed the basis of your opinion?

A Oh, I started attending meetings on the west side in 1958, and the most recent meeting that I attended, it seems to me, was last spring, that is, the spring of 1973.

Q What is the population density of the west side

area? You say your judgment relied upon that fact?

A I would say that there are about 33 to 35,000 people in the area. Of course, it is very hard to make such a statement because of the fact that the plan isn't complete. When the plan will be complete, there will be about 35,000 people in the area.

Q Of that number, what percent will be low income people?

A By the original plan, 2500 low rent units, we would have approximately, well, approximately 30 per cent of the population would have been low income people.

Q And these low income, is that the hodge-podge measurement by which some people are low income by one standard but not by another, depending upon where they live; is that correct?

A Well, that is how you characterized it, so if you want to use the word hodge-podge, I will go along with it.

Q Would you agree with it, that is, a hodge-podge?

A I don't really know what the word hodge-podge means.

Q Is your statement that 30 per cent of the people to live in the area will be low income people?

A Will be qualified by law to live in subsidized low rent apartments. Suppose we put it that way.

Q A subsidized low rent apartment would be what?

Solely low income housing projects?

A They would be public housing apartments, they would be apartments in Mitchell-Lamas, subsidized by the Capital Grant Program, there would be some families living in Mitchell-Lamas helped by skewed rent programs or skewed rent arrangements. They would be families living in apartments leased by the Housing Authority and sublet to them, they would be families living in 236 projects benefitting from rent supplements, and they might be families of low income assisted by public assistance living in other not so fully subsidized apartments.

Q What percent of the low income people are on welfare? What you project to be on welfare living in this area?

A I would have no way of knowing that information.

Q Would the majority of the people living in these low income housing projects be employed, the head of the household be employed?

A A great -- the answer to that question would depend on the intake problems of public housing. 15 years ago the public housing welfare load was the order of 14 per cent. The last figures I saw showed that the welfare load was about the order of 30 per cent, and the intake was running more than 50 per cent welfare assisted

families. Now, whether those figures have continued or will continue in the future, I have no way of knowing.

Q But you haven't made a study or an estimate of whatpercent of the low income people would be welfare people or employed people living in the west side area?

A No, I haven't.

Q Based upon the existing structures that are built up there, the existing low income units, do you know what the percent of the residents are non-white?

A I have no way of knowing that question, the answer to that question.

Q Do you know what the percent of non-whites is for the entire area?

A No, sir, I don't.

Q Do you know what the voting record has been of people lving in the West Side Urban Renewal area over the last ten or fifteen years?

A I have no information --

MR. MORRIS: I object to going astray; the voting record.

THE COURT: Whether or not the answer or the question itself is going to make that much difference with the fact finder is debatable. But it does come within the area of probing the quality of the alleged expertise

of the witness.

Objection overruled.

What is the pending question, Mr. Court Reporter, please?

(Question read.)

THE COURT: If you know, yes or no.

THE WITNESS: No, sir.

THE COURT: Next question.

MR. LAND: I have no further questions, your Honor.

THE COURT: All right, Mr. Land.

Mr. Gold, without repeating the ground already covered so completely and thoroughly, in a way, by Mr. Land, I don't want you to feel you are being curtailed but what I do think is, unless you wish to expand on something that has already been gone into, I hope you will leave it alone and go to something else.

Before youbegin, there's another matter involving someone who is languishing in jail and we have got to take care of that fellow,too.

(Pause.)

THE COURT: All right. Let us proceed, Mr. Gold. Understand that I encourage you to go into thorough cross examination, but since we haven't a jury here there's no need for the usual emphasis and repetitiveness that goes on

for that area?

before a jury.

MR. GOLD: I think Mr. Land has been very thorough, your Honor.

THE COURT: I agree with you. I have already beat you to it.

He won't get any increase in pay, that I will assure you.

MR. GOLD: I agree.

THE COURT: You know it from your own experience.

MR. GOLD: That is correct.

THE COURT: Off the record.

(Discussion off the record.)

CROSS EXAMINATION

BY MR. GOLD:

Q Mr. Starr, have you ever heard any city official use the words "critical mass of people" in referring to the 2500 low income figure that we have been talking about?

A No, sir.

Q Is it your feeling, sir, that the 2500 figure was regarded at the time the plan was adopted in 1962 as a maximum of low income units to be developed?

A Absolutely.

Q Do you know, sir, today how many public housing

projects have been built in the West Side Urban Renewal area?

A It is either two or three, I believe.

Q Do you know how many units those projects comprise?

A Those projects don't comprise more than five or six hundred units within the area.

Q Do you know when those units were completed, sir?

A Well, the Steven Wise Houses was the first completed. I think it was the first finished project in the entire area and it was completed early in the 1960s. I couldn't give you the exact date. I haven't followed the others.

time it was the largest undertaking --

Q Mr. Starr, you spoke in your earlier testimony about infusion of Government moneys, and you also spoke in connection with thatabout the projects at Co-op City and Richedale Village.

Do you know, sir, if the Co-op City project is in an urban renewal area?

A No; it is not in an urban renewal area.

Q Do you know how many families that project was developed for?

A 15,500, approximately.

Q Is it a State-aided project?

A Yes, sir.

Q Is it a straight Mitchell-Lama -- limited-profit --

A It is a limited-profit project.

Q Are there any Federal funds in the Co-op City project?

A No, sir.

Q Are there any Federal funds in the Rochedale Village project?

A I don't think so. No, sir.

Q Were both of these projects developed by the United Housing Foundation?

A That is correct.

Q Has the United Housing Foundation done any work, to

your knowledge, in the West Side Urban Renewal Area?

A No, sir.

Q So there really is, would you say, sir, very little comparison, if any, between the West Side Urban Renewal Area and the Co-op City or Rochedale Village development; is that not so?

A No; I would disagree with you. There are similarities.

Q Can you tell me --

A There are both differences and similarities.

Q Can you tell me the similarities in your mind between the West Side Urban Renewal Area, for example, and Co-op City?

A The similarity between Co-op City and the West Side Urban Renewal area is that many of the buildings in the West Side Urban Renewal Area were designed to be occupied by people of the same income range as the buildings of Co-op City; that many of these buildings in the West Side Urban Renewal Area were designed to be owned cooperatively by the tenants in residents; that many of them were financed under State law and that both Co-op City and the West Side Urban Renewal Area have an interracial mix or population.

Q It is true, isn't it, that all limited-profit development is financed under State law?

A It may be financed by the City, and it may be financed by the State, but all subject to State law.

Q All subject to State law.

Do you know how many State-aided Mitchell-Lama projects there are in the West Side Urban Renewal Area?

A I think there are very few now.

Q Do you know a number?

A I don't know a number, because the plans have been changed on a number of occasions.

Q Do you know how many City-aided limited-profit projects there are in the West Side Urban Renewal Area?

A I don't know the precise number at this moment.

Q Do you know, sir, how many low income units of rehabilitated housing there have been constructed to date in the West Side Urban Renewal Area?

A Rehabilitated housing?

Q That's right. Low income.

A Very few.

Q Very few. Do you know how many units in the various Mitchell-Lamas in the area are devoted or are subsidized through the State's capital grant program?

A I can give you a total. I cannot break it down at the moment.

Q A total of what, sir?

York are low income people.

A A total of [illegible] units in the West Side Urban Renewal Area which will be low income or for low income tenants if present plans, not including Site 30, reach their conclusion.

Q Perhaps you misunderstand me. I am asking how many units have been constructed to date which make use of the State's capital grant program, not what is in planning, what has been done to date. Do you know that?

A I am unable to give you any such breakdown, Mr. Gold.

Q Do you know how many units in the area are using the leased public housing program?

A I cannot give you that figure, either.

Q Do you know, sir, how many total units, including the redevelopment area, the rehabilitation area, and the conservation area are encompassed in this West Side Urban Renewal Area?

A The total plans call for 8,800, if memory serves me.

Q 8,800 units?

A All together.

Q Including everything in the area; is that correct?

A I think that includes everything, including the Central Park West frontage.

Q Since the final plan, the final urban renewal plan,

was adopted, in 1962, do you know how many amendments there have been of that plan?

A No; I certainly do not. There were many amendments.

Q When you say "many", can you give me an approximation?

A It all depends, really, what you mean by amendment. Sponsorship changes, changes of a minor character, changes of a major character. The plan has been altered in many respects.

Q Have you read the plans, sir, the latest 1966 version of the plan?

A Yes; I read it.

Q To your knowledge, are there any figures in there which break down the numbers of low income housing, middle income housing and any other type of housing?

A Not in my copy.

Q Not in your copy. And in reading that, did you notice that when the plan speaks of land uses, it uses the words "proposed land uses"; does it not?

A I wouldn't remember that.

Q You wouldn't remember. You spoke, or you testified about squatters, two weeks past, two weeks back. Do you know how many squatters were involved on Site 30 at the time that they had taken over the building?

A Not precisely, no.

Q Do you know if the City evicted the squatters?

A I think you made an arrangement with the squatters evicted, and some you got to move voluntarily.

Q But they were moved from the site?

A That is correct.

Q Do you know, Mr. Starr, if any of the units proposed for the Site 30 development are planned for the elderly?

A No; I don't know that.

Q Do you know how many units are involved in the projected development on Site 4 in the West Side Urban Renewal Area?

A It's a small number. It's certainly less than 200 or 250.

Q Do you know if any of those units are contemplated to be for the elderly?

A No; I don't know that.

Q In your analysis, Mr. Starr, of tipping point, do units devoted to or occupied by the elderly come into the picture?

A They might. Under certain circumstances, but they -- but usually there isn't the same resistance to the elderly poor that there is to the other poor people on the

part of middle income families.

Q That would be regardless of whether they were white or non-white elderly; is that correct?

A Yes; but of course, again, that is only one of the factors that goes into the tipping point as I defined it.

Q Have you ever read the contract between the Trinity School and the City of New York?

A No.

Q Do you know what site the Trinity School and its project are located on within the area?

A I don't know the number, but it is directly across the street, cater-corner from Stephen Wise Houses. It's on the north side. Stephen Wise is southwest of it, and Site [illegible] directly south.

Q With reference to your organization of Citizens Housing & Planning Council, does that organization represent any real estate interests in the City of New York?

A Our organization represents its board of directors, and I will be happy to give you a breakdown of the Board of Directors and their occupations. Some of them are in real estate. Some are social workers. Some, or at least one is an attorney for Community Action Legal Services.

I beg your pardon. For MFY Legal Services.

Others are attorneys for other buildings, public

interest groups and so on.

Q I think in your testimony you used the word "abandoned" with reference to the screening procedure of the New York City Housing Authority in its public housing projects. When you say "abandoned", sir, do you mean that there are no procedures by which a tenant makes an application and is taken into public housing?

A No, sir. I said that the 29-point procedure, the 29-P.P.P. had been abandoned. There is a screening procedure of a sort, but in my opinion it is not an adequate screening procedure.

Q Is there a screening procedure or some procedure by which tenants in public housing projects may be evicted after they have been living there for a period of time, for various reasons?

A Only following an evidentiary hearing that meets the criteria of the Federal Courts, as agreed to, I believe, in a certain stipulation that was entered into here, in the Southern District of New York.

Q That is a court-mandated type of procedure; is that what you are saying, sir?

A That is what I am saying.

Q Is that as a result of the decision in the Circuit Court of Appeals of this Circuit?

A Yes; but I don't know which Circuit it was, but there was -- I am not an attorney. There was a leading opinion on this subject, and it was -- I don't know whether it was handed down in this Circuit or elsewhere, but obviously it applied in this Circuit, and under the terms of that leading opinion a stipulation was entered into here with respect to a specific case.

If I have used the wrong legal terms, I ask your forebearance.

Q But there are procedures?

A Yes.

Q Without question?

A Yes.

Q You mentioned, just before I started my questioning, that you had attended various meetings of community organizations as recently as in the spring; is that correct?

A Yes; I said I thought it was the spring of '73.

Q Can you specify which organizations you are speaking about?

A I am thinking particularly of an organization called Continue, and on reflection it was the spring of '72, not the spring of '73.

Q Is that the only organization whose meeting you attended?

A Recently, yes.

Q You also mentioned there was increased activity of the community organizations in the West Side area. Could you explain what that meant?

A I was thinking of Continue. I was thinking of other telephone calls which I have had from people who may or may not have been affiliated with Continue, who told me that they were organizing to retain what they thought were important features of the West Side Urban Renewal plan, which they felt were being compromised.

Q What are the names of those groups?

A I don't remember the names of those groups. I just remember people calling me. I don't even remember the names of the people who called, although if I consulted my diary, I suppose I could refresh my recollection.

Q You don't have that diary with you, do you?

A No; I certainly do not.

Q So basically you attended one meeting in the spring of '72?

A That is the last meeting I attended.

Q Was that a regular meeting of the Continue organization, do you know?

A It was an open meeting at the Trinity School, at which I happened to be one of the speakers.

Q At the Trinity School, and you spoke?

A Yes.

Q Did you speak by invitation of Continue?

A Yes.

Q Do you feel, sir, in the determination of the number of low income units to go into the West Side area that this had a relationship to the relocation work load of that, for the area at the time?

A It had some relation, yes, but it was not the crucial or determining fact.

Q What was the crucial or determining factor that went to the determination of the number of low income units?

A Well, I have described it before, Mr. Gold. I will go back over it again.

The determining factor was whether or not private investment in the brownstone houses and private investment in the cooperative apartments could be gotten or would be encouraged with what maximum level of low income occupancy in the West Side Urban Renewal Area, all subject to the appropriate subsidies being available for low income households.

Q But, Mr. Starr, in 1962 when this figure was arrived at or determined, there had been no investment in brownstones in accordance with the urban renewal plan. There had been no redevelopment, no Mitchell-Lama construction.

Are you telling us that these figures were arrived at based on what someone thought in 1962 might happen three, four, five, ten years from that point?

A They were arrived at by the estimation of what set of circumstances would encourage that investment in order to maintain an integrated area here.

Q Mr. Starr, are you familiar with the urban renewal process as it has been developed and used in this city generally?

A Yes. Not as a lawyer but generally.

Q And each urban renewal area has an approved plan; is that correct, sir?

A Yes, sir.

Q And very frequently, would you say in your opinion, there were changes in those plans?

A Yes.

Q And would you say in your opinion that change would be the rule rather than the exception with respect to urban renewal?

A I hope I could avoid making that kind of a judgment. I don't know what is a majority or what is a rule and what is an exception.

Q Are you familiar with any particular urban renewal area outside of the West Side Urban Renewal Area or the plan

that this witness referred to repeatedly as to the source

for that area?

A Well, I am familiar with many of the urban renewal areas. I testified with regard to many of them before the Planning Commission and the Board of Estimate. I visited the areas before renewal. I tried to evaluate their need for renewal. I tried to evaluate the proposals that came out, and I am well aware, if this is responsive to your question, that many times the plans that were originally formulated had to be changed.

Whether these changes occurred more often than not and how significant they were, I would be unable to characterize.

Q Particularly in a process that was going on, as we have here, for some fifteen to twenty years, changes were frequent?

A Changes were frequent; yes, sir.

Q There were varying reasons for those changes; is that correct?

A Yes, sir.

Q And the plan had a certain flexibility which permitted change, did it not?

A Every plan must have a certain flexibility.

Q So no urban renewal plan, then, is fixed in terms of its land uses or its proposals at the time that the

MR. MORRIS: -- and all counsel agreed on that.

original plan is approved by the City Planning Commission and the Board of Estimate; is that correct, sir?

A Well, I don't know whether no plan is fixed. I tend to believe that plans are fixed with respect to the general land use, with respect to the perimeters, with respect to the density of construction and with respect to other basic factors. But on occasion, indeed there are changes.

Q And land use is a frequent change, is it not? Change, I say, in the use of a particular site from one use to another: is that a frequent type of change in the urban renewal process?

A Well, if by land use you mean a change from a residential to a commercial or industrial use, I would say that is quite infrequent. If by land use -- what do you mean by land use?

Q Well, in the West Side area, for example, a change from one type of housing on a site to another type of housing. That occurred rather frequently, did it not, since the inception of the plan?

A It certainly occurred in the West Side Urban Renewal Area. I don't believe it occurred with anything like that frequency in other urban renewal areas which were simpler.

Q This is the largest undertaking, at least at the

Q Would you tell the Court what that figure is?

time it was the largest undertaking --

A Certainly it presented the most formidable administrative difficulties.

Q Mr. Starr, at the time you testified, in October of 1971, at the Board of Estimate's hearing on Site 30, did you discuss with the board or make any statement with reference to the 2,500 units that we have been speaking about here today?

A No; I don't think I did.

Q Did you discuss the tipping point with the Board of Estimate?

A No; I did not discuss tipping point.

Q Is it not true that you have supported public housing throughoutyour life pretty much?

A I am perhaps the last firm believer in Government-owned housing. Sometimes it seems to me that way. I am a very strong believer in public housing.

Q When you say Government-owned housing, you are talking about straight Government-owned housing?

A Yes. That is not to say that the law should not be amended in a number of respects, but I firmly believe in the principle of Government ownership of housing.

However, in testifying at the Board of Estimate and the Planning Commission with respect to specific projects,

down, if you would like it.

my organization insists on making a review and evaluation of each specific proposal, because we believe that the details, specifications of the particular proposal may be very important in determining whether or not that proposal will provide good housing for its residents and will provide a helpful or harmful addition to the local neighborhood; and, finally, more important, whether it is in the best interests of the city as a whole.

I don't support a specific project just because it is public housing, and I don't oppose a project because -- just because it is luxury housing. We try to evaluate the points in each one.

Q You indicated in response to my question about the 2,500 number having been formulated in 1962 where nothing had yet been done in the area, that some statements had been made about future investment by people. Do you know who made those statements?

A Well, Mr. James Fell, among others, made those statements. The matter was widely discussed.

Q Were they based on any study, Mr. Starr?

A Well, they were certainly based -- It's such a difficult thing to study what somebody's possible future investment policy is going to be, given certain circumstances. I can't imagine that such a study would have any real validity.

to the motion papers.

They were based on the feeling of people with long experience in real estate, and, I might add, a very progressive attitude towards the possibility of an interracial and inter-income neighborhood as to what the future behavior of investors might be given a set of hypotheses.

That is about the best kind of study that could be done with what was purely hypothetical at the time.

Q And out of the analysis made by those various people came this number of 2,500, which now represents, I imagine, some kind of a magic number in relation to the total development of the West Side Urban Renewal Area; is that correct?

A That's a long question. First, I must say it does not represent a magic number. What it represented was a political compromise between those who wanted more low rent housing and those who warned that if there would be any more low income housing, the whole area would have to be developed with low income housing, because no other kind of housing would be successful.

Q Those people that wanted the more low income housing: do you know what their reason was for wanting more low income housing in the area?

A The same reason that all of us want more low income

so I have a picture. I don't even know the date of this housing: because the worst-housed people in the City of New York are low income people.

Q Yes, Mr. Starr. Wasn't there major consideration given to the needs of the people who had to be relocated from the areas to be redeveloped in the area?

A Mr. Gold, if you follow the actual pattern of relocation from an urban renewal area, you will find that the promise of relocation within the area is almost always illusory. This area was developed in a three-stage plan for the purpose of assuring as many as possible of the people an opportunity to return, but this wish to return had to be measured against the other values, human and material, which the plan sought to give body to.

Q But the relocation problem, the wish to return, the need to find housing for the people that had been displaced: that was one of the primary concerns, was it not, of the people who were determining how many low income units would be involved in this plan?

A It was certainly one of their concerns, of course.

Q Was it a primary concern?

A I am not privy to their order of priority. Ask them.

Q But you testified, Mr. Starr, that you were involved in all of these proceedings from 1955 up to the point

where the final plan was adopted, that you were close to Mr. Fell and the other various planners --

A You are not asking me about Mr. Fell. You are asking me what went on in the mind of Joseph Monserrat, for example, when he demanded more low income housing for the area, and I don't know what was in Mr. Monserrat's mind besides his feeling that low income people deserved a very high priority in any housing plan, because they have the worst housing in the city.

Q Is that the same Mr. Joseph Monserrat, by the way, who is now a member of the Board of Education of the City of New York?

A Yes, sir. I don't know whether he is or is not. I know he was.

THE COURT: The Court takes judicial notice of the person involved.

We will take a short recess, gentlemen, on this case.

(Recess.)

pm

BY MR. GOLD:

Q Mr. Starr, you mentioned earlier in your testimony that I believe in one of the Mitchell-Lama buildings there were 80 per cent low income families.

A Yes, sir.

Q Can you tell us on what you base the statement of the 80 per cent?

A Well, I base it on the fact that the building was designed for 30 per cent rent supplemented families, and that by conversation with Mr. Sugarman, who is with the Department of Social Services, I learned that the Welfare Department was paying the rent for a large portion of the people living in the other part of the building, that is, not the physical other part.

Q I understand that. Are you saying, sir, that the 80 per cent consists of all welfare recipients?

A No, I didn't say that. I said that my understanding was that the building was to be 30 per cent for low income families who I presume to be the beneficiaries of the rent supplements on top of the FHA 236 mortgage subsidy, and that in addition to those -- that 30 per cent, who I don't know whether they are on welfare or not, in the other part of the building, that is, the part without the rent supplements, a large number of the tenants were welfare recipients.

That is what I am saying.

Q And this information you say, you got from Mr. --

A I heard it from rumor and I talk to Mr. Sugarman about it.

Q That is Jules Sugarman; is that correct?

A Yes.

Q The City's Commissioner of Social Services?

A That is correct, yes.

Q And did Mr. Sugarman tell you how many welfare families were occupying this particular Mitchell-Lama?

A I don't think we got into precise figures, but he told me that it was a great many, that the Welfare Department, Social Services, that it was a good housing bargain for them and good housing for their families; that since Mr. Levine of the state Welfare Department authorized these payments, they were -- they proposed to use it that way.

Q In authorizing the payments, do you mean that the 236 rental was authorized to be paid?

A The rental that was appropriate for a 236 subsidized housing project.

Q I'm sorry, I'm still not sure of what you mean by 80 per cent of the building is low income. You have said

30 per cent, you think, should have been devoted to rent supplement units?

A That was my understanding, yes.

Q Are you saying, then, that 50 per cent above the 30 per cent is now in the same category as the 30 per cent?

A No, I am saying the other -- in addition to the 30 per cent who were low income by definition, a large number of those apartments which were not low rent by definition catered to low income families by virtue of the fact that the Department of Social Services gave them rental allowances to cover their rent.

Q Yes; are you saying a large number of those apartments, on the one hand you say 80 per cent and on the other hand you say a large number?

A I can't sit here and do in my head -- I regret to say -- what percentage of the 70 per cent it is necessary to have on welfare to come out with an 80 per cent total. But I remember making a calculation at the time.

Q Do you know which building this is, Mr. Starr?

A I can't remember the name of the specific building.

Q Do you know how many units are in that building, sir?

A Well, I don't think there are more than two hundred odd units in the building, I don't think any

of the buildings in that area are.

Q Is that a state aided limited profit project?

A Wait a minute. It is an FHA 236. Who holds the mortgage, I don't know whether it is state or city, my guess is it is city.

MR. GOLD: I have no further questions. Thank you, your Honor.

THE COURT: Mr. Douw, you or your associate?

MR. DOUW: No, your Honor, that will be all.

THE COURT: All right. Mr. Morris, you may take the witness on redirect.

REDIRECT EXAMINATION

BY MR. MORRIS:

MR. MORRIS: Your Honor, I ask that this statement by the City of New York Housing and Redevelopment Board on the final plan for the West Side Urban Renewal area be marked for identification.

THE COURT: Have you any objection, gentlemen, to it going into evidence?

MR.GOLD: May I see it, if your Honor please?

THE COURT: Mark it for identification first.

MR. MORRIS: I might say for the record this is an exhibit to the papers filed on the motion before the court.

THE COURT: Yes, sir.

(Plaintiffs' Exhibit 1 was marked for identification.)

Q Mr. Starr, I show you Plaintiffs' Exhibit 1 for identification and ask if this is the statement to which you referred in your testimony under cross examination as to the position of the Housing and Redevelopment Board, Milton Mollen, to the Mayor, to Mayor Wagner, in connection with the hearing on the approval of the West Side Urban Renewal plan?

A Yes, sir, that's it.

Q And that statement is dated -- would you give the date, please -- May 1962? The last page.

A Well, it is October 8, 1962.

Q No, the last page.

A The last page? May 1, 1962.

MR. MORRIS: I offer it in evidence.

THE COURT: Will you show it to your opponents? Referring to exhibit what?

MR. MORRIS: 1.

THE COURT: 1 for identification. Plaintiffs' Exhibit 1 for identification.

By the way, gentlemen, Mr. Morris makes the statement that Plaintiffs' Exhibit 1 for identification is a

part of the papers before me on this matter; is that right?

MR. MORRIS: Yes, your Honor, it was annexed as an exhibit to the answering papers filed by Strycker's Bay in the motion before your Honor which is now merged with the trial.

THE COURT: All right. I am surprised you didn't see that.

MR.MORRIS: They produced it.

THE COURT: I am saying, I don't understand why they didn't see it.

MR. LAND: We have seen it, your Honor.

THE COURT: Have you? All right. That's all you have to say. There must be a good reason. I just want to follow it.

MR. LAND: You mentioned about the prior motion papers. It is my understanding that all the exhibits annexed to the prior motion papers are not of necessity in evidence here until they are formally offered.

THE COURT: You are absolutely right. But in order to meet the other situation, you didn't know this would result in the withdrawal of the application for the temporary restraining order, so I gathered that you would have to familiarize yourself with all the papers on file at the time. And I still press it. I still don't under-

stand why 1 for identification just being offered now didn't come to your attention.

MR. LAND: We have seen that.

MR. GOLD: I just want to see it's the same. We have a copy.

THE COURT: At any rate, there is no objection to it going into evidence, I take it, otherwise you would speak up. I hear nobody and, therefore, it goes in.

MR. LAND: Your Honor, the only objection we would have is this point of relevance. If this can be tied up in terms of what relevance it would be used for and that is made clear, then there will be no objection.

THE COURT: Let me interrupt you. Is there any question that Plaintiffs' Exhibit 1 for identification is a true copy of what is reflected in the official records with respect to that particular item of governmental operation?

MR. LAND: No, except that it is not necessarily the complete statement of what the city may have said about this whole thing.

THE COURT: That's another matter. But as it stands there, do you question it in any way --

MR. LAND: It is an accurate copy of something in the city's records.

THE COURT: Does it not deal with the very point

that this witness referred to repeatedly as to the source from which he got the 2500 figure or am I mixed up?

MR. MORRIS: You are correct, your Honor.

THE COURT: All right. Does it not?

MR. LAND: It does.

THE COURT: Objection overruled. Received in evidence.

(Plaintiffs' Exhibit 1 was received in evidence.)

THE COURT: All right. Next question.

MR. MORRIS: Your Honor, I might state for the record at this point that a meeting of counsel was held in connection with the introduction of exhibits in this case at your Honor's suggestion on Friday of last week, where all counsel met and discussed the question of the exhibits of which this is one, and as I understand the stipulation which was made by counsel, it was that all papers or all exhibits which were annexed to the papers on the motion which was originally before your Honor, if offered in evidence wouldn't be objected to on technical grounds that they were not the originals or that they were not kept in the ordinary course of business and the usual technical objections --

THE COURT: Very good, I am appreciative to counsel for that.

MR. MORRIS: -- and all counsel agreed on that. They reserved their right, however, to object on grounds of relevancy or other grounds.

THE COURT: Of course. All right. Next question.

MR. MORRIS: Yes, that also included not only the exhibits which were before the Court on the motion, but also papers which we obtained from the government's files as a result of subpoenas served on the government where we went through their files and located documents which will also be offered in evidence in this proceeding and that is subject to the same stipulation.

THE COURT: I take it, unless I here anything to the contrary, that is so.

MR. LAND: Essentially we are not going to raise an objection on the original document rule is what it comes down to.

THE COURT: Fine. Thank you. Thank you. I appreciate that very much, because that saves an enormous amount of time. All right.

Q Mr. Starr, I call your attention to page 1-A of Plaintiffs' Exhibit 1, and ask if that contains any figure relating to low rent housing estimated in the West Side Urban Renewal area?

A Yes, sir, it does.

Q Would you tell the Court what that figure is?

A 2,465 units.

Q Is that the 2500 figure or the first statement of that 2500 figure to which you testified on cross examination?

A Yes, it is.

THE COURT: Will you give me the most concentrated and the most significant reference to it? You have undoubtedly looked at it. Read it to me. What is the most clearcut reference to that figure of 2400 odd or 2500? What does it say?

THE WITNESS: "Low rent housing (estimated) 2465 units."

THE COURT: What is the source of that statement?

THE WITNESS: This statement is a statement by the City of New York Housing Redevelopment Board on the final plan for the West Side Urban Renewal area. Page 1-A begins with the heading "Revised Housing Figures. West Side Urban Renewal Renewal Area."

Then come the words "Reflecting changes in housing distribution by types incidental to public hearings and approval by the Board of Estimate." Then it says "Low rent housing (estimated) 2,465 units." That is broken

down, if you would like it.

THE COURT: No, all right. Next question, Mr. Morris.

Q May I have the exhibit.

A (Handing).

MR. MORRIS: I ask that this exhibit be marked for identification.

(Plaintiffs' Exhibit 2 was marked for identification.)

Q Mr. Starr, I show you Plaintiffs' Exhibit 2 for identification consisting of a statement made by Jason R. Nathan, Chairman of the Housing and Redevelopment Board, on proposed amount amendment to the West Side Urban Renewal Plan dated December 9, 1966, which makes reference to a number of low income housing units in the development of 2,559, and ask if this is one of the documents to which you referred in your testimony under cross examination about 2500 units of low income housing?

A Yes, this --

THE COURT: That's an answer. Next question.

MR. MORRRIS: I offer it in evidence.

THE COURT: Show it to your opponents. You gentlemen have to hand your exhibits to one another.

MR. MORRIS: That was also an exhibit annexed

to the motion papers.

THE COURT: It doesn't make any difference once it is marked in evidence and unless they oppose it.

THE COURT: Any objection?

MR. LAND: No objection.

THE COURT: Mark it in evidence, please, Mr. Clerk.

(Plaintiffs' Exhibit 2 was received in evidence.)

THE COURT: Next question.

Q Mr. Starr, I call your attention to page 2 of Plaintiffs' Exhibit 2 and ask if there is a figure there relating to the number of low income units in this development at that time?

A There is.

Q Would you tell us what that figure is?

A 2,559.

Q Is that also one of the statements to which your testimony on cross examination referred?

A Yes, sir.

MR. MORRIS: I ask that this exhibit be marked for identification.

THE COURT: You see, counsel, you forget that I have never seen these before.

MR. MORRIS: May we hand them up to you.

THE COURT: You have got to say a word or two so I have a picture. I don't even know the date of this last thing that you showed him, Exhibit 2. You have it there.

MR. MORRIS: Yes.

THE COURT: All right. Tell me a word. I know about Exhibit 1. But you said nothing about Exhibit 2. What is the date of it?

MR. MORRIS: December 9, 1966.

THE COURT: What is it?

MR. MORRIS: It is a statement by Jason R. Nathan, Chairman of the Housing and Redevelopment Board before the Board of Estimate on Friday, December 9, 1966, on the proposed amendment to the West Side Urban Renewal Plan.

THE COURT: Now the fact finder knows what you are talking about.

All right. That is enough for me. I will examine that when I get a chance.

(Plaintiffs' Exhibit 3 was marked for identification.)

Q Mr. Starr, I refer to Plaintiffs' Exhibit 3 for identification, which is a statement of the Housing and Development Administration, open letter to West Side Urban

Renewal area and was forwarded to you by letter of transmittal dated October 6, 1967, from C.R. van de Velde, Director, West Side Project, and ask if this is a statement that you received and testified to on cross examination.

A Yes, sir, it is.

Q Does that statement also refer to comunitments of 2500 units?

A Yes, sir it does.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to your adversaries.

MR. LEVY: Do you have another copy for us?

MR. MORRIS: Do we have any extra copies, Mr. Starr?

THE WITNESS: I don't. That is my only copy.

MR. MORRIS: We will Xerox it for you.

THE COURT: Any objection to the last exhibit?

MR. GOLD: I have no objection, your Honor.

THE COURT: You don't have to say anything. I will assume, when you don't say anything, that means no objection.

MR. LAND: One moment, your Honor.

THE COURT: Sure, take your time.

MR. LAND: This is one document we haven't seen yet.

THE COURT: Take your time. That's the only way you can tell.

MR. LAND: No objection, your Honor.

THE COURT: No objection.

(Plaintiffs' Exhibit 3 was received in evidence.)

THE COURT: In order not to bother all the time with statements by all counsel, when counsel for the government takes a position, unless I hear anything added by the rest of you, I will assume you agree with his position. All right.

Q Mr. Starr, does Plaintiffs' Exhibit 3 refer to 2500 units of low income housing in the West Side Urban Renewal area in the opening sentence of the memorandum?

A Yes, sir, it does.

THE COURT: Will you read it to me, please, Mr. Starr? Quote.

A "YOu will all remember that a proposal to carry out the city's promise to provide 2500 low income units in the West Side Urban Renewal area was approved by the Board of Estimate last December."

THE COURT: Thank you.

Next question.

MR. MORRIS: I ask that this exhibit be marked for

identification.

(Plaintiffs' Exhibit 4 was marked for identification.)

Q Mr. Starr, I show you statement by Jason R. Nathan, Administrator, Housing and Development Administration before the Board of Estimate, dated October 25, 1967, which makes reference therein to the commitment of the city to build 2500 units of low income housing in the upper west side and ask if this is one of the statements to which you referred in the testimony on cross examination.

A Yes, sir, it is.

MR. MORRIS: I offer it in evidence.

THE COURT: Please show it to your adversaries.

MR. LAND: The only problem with this letter --

THE COURT: With Exhibit 4 for identification.

MR. LAND: -- Exhibit 4 for identification and with Exhibit No. 2 is that they each contain a separate resolution of the Board of Estimate. We are dealing with the minimum of units of low income housing; however, the total number differs considerably.

THE COURT: That doesn't make it inadmissible. He says these are the documents that he had in mind when he gave testimony on cross examination, and that is the point. If you want to argue as to what they contain, that is

another matter and their significance or whether the Court should give any weight to them, that is an entirely different proposition.

Any objection to 4?

MR. LAND: No, your Honor.

THE COURT: Very well.

MR. MORRIS: I offer it in evidence.

(Plaintiffs' Exhibit 4 was received in evidence.)

Q Mr. Starr, I read you from Plaintiff's Exhibit 4, the statement contained on the first page of Jason R. Nathan's statement dated October 25, 1967, where it is said:

"Five years ago the City made a commitment to build 2,500 units of low income housing in the upper West Side."

I read on page 3:

"The most important result is that housing for low income families will be in ample supply. There will be enough not only to meet the needs of the residents of the neighborhood who must be relocated but to fulfil the total commitment of 2,500 apartments, to which the City is pledged."

Are these the statements to which you refer in your cross-examination?

A Yes, sir.

Q And in fact, were not there other statements of the same nature as these four exhibits, referring to that 2,500 unit figure from time to time during the period of years subsequent to 1962?

A Yes, sir.

Q There were a number of them, were there not?

A Yes, sir.

Q It was understood by everybody that that was the figure?

A Yes, sir.

MR. LAND: I object to the last two questions and answers.

THE COURT: It is a little late. The objection, however, is sound. The objection is sustained. The question is stricken and the answer is stricken.

Next question?

Q Now, Mr. Starr, you testified on direct examination at page 216 and 217 of the minutes of your testimony -- No; I am sorry. 248 --

THE COURT: Give counsel a chance to find it.

Q (Continuing) Yes. Page 248, at the middle of the page. You made the following statement:

"If we say that Mitchell-Lama housing in that area with the maximum permitted tax abatement at that particular time, probably it would rent in the area of $35 to $60 a room a month, maybe as low as $30 a month."

Was it your testimony that it would be $35 to $65 a room a month?

A No, sir; it was not.

Q Would you tell us what your testimony was?

A My testimony was $35 to $40 a room a month.

Q And not $60 a month?

A That's correct.

Q Now, Mr. Starr --

THE COURT: Gentlemen, excuse me.

If that is correct as you best remember it, then we ought to correct it by agreement and by stipulation on that particular page, so that you will find, in other words, that what is said on the page just read by counsel is what most judges will look at, and they will not go looking for what has just been recited.

You get together and see if you can work out something. If that was correct as you remember it, then it ought to be physically corrected by order of the Judge.

MR. LAND: I am informed that our --

THE COURT: If you can't, then leave it alone. If you can, tell me something. If you can't forget it.

Next question?

Q Mr. Starr, would you say the change in Site 4 and Site 30 from middle income housing to low income housing had the effect of constituting a major change in the urban renewal plan?

A I would.

Q Now, Mr. Starr, aren't some of the families on welfare occupying middle income apartments in the West Side Urban Renewal Area?

A Yes, sir.

Q Therefore --

MR. LAND: Objection, your Honor, unless we have a foundation as to his knowledge of such a statement.

THE COURT: That is subject to further examination by you, if you wish, or you can argue, "Judge, you want to take his testimony when he gives testimony of this kind? He doesn't predicate it on anything at all."

The testimony stands. It is not objectionable.

Next question?

Q Now, with respect to the process for the selection of tenants by -- the processing of tenants, was such a selection process, to the best of your knowledge, employed by the Welfare Department in connection with putting welfare tenants into West Side Urban Renewal Area apartments?

A None to my knowledge.

Q There was no processing?

A Not to my knowledge.

Q You spoke of perimeter public housing projects. You coulnd't recall the names. Were those projects the de Hostos and Douglass Addition? Are those the two projects?

A That is correct.

Q You testified on cross-examination, or you made reference to the filtering down process. Would you tell us what that is?

A A filtering down process of housing is the process

by which housing which is originally built and -- built for an occupied by high income families becomes vacated by those families and becomes in turn occupied by families of a lower economic means.

To define it precisely, it is extremely difficult, Mr. Counsel, because of the differing values of money and the inflationary process, and books have been written attempting to define it more precisely, but in general it means the process by which low income people come into the possession of housing that was originally built for higher income families.

Q Now, Mr. Starr, in the course of your activities in the housing and urban renewal area, which you testified began generally around 1957 when you became executive director of the Citizens' Housing & Planning Council, did you keep abreast of developments which occurred in the West Side Urban Renewal Area?

A Yes, sir.

Q And would you tell us how you kept abreast of those developments?

A First there was -- First I was appointed by Mayor Wagner to serve on the Park to Hudson Citizens' Committee under the chairmanship of Stanley lowell, and for a period of years we met on the West Side to discuss with local people

and to discuss with the City the urban renewal plan and its potential impact on the area.

I cannot remember how many meetings I attended between 1952 and 1952 or '63, but certainly the number would exceed twenty-five meetings.

I investigated a number of the West Side sites for the Citizens' Housing & Planning Counsel together with committees of the Council. I subsequently, in 19 -- those inspection activities continued throughout the entire period of the West Side Urban Renewal plan.

Q Would you tell us what those years were?

A Those years ran from approximately 1959 and '60 through 1971 or '72.

I spoke on numerous occasions in their offices with public officials whose province was the West Side Urban Renewal Area. Those would include Mr. vander Veld, Jason Nathan, Milton Mollen, Clarence Davies, James Felt and others who were deeply concerned.

I met on many occasions in public, in restaurants and in my home with Father Henry Brown, who was past president of the Stryckers Bay Council. I participated in meetings of various kinds with local groups, and ultimately, beginning in 1967 and continuing until a few months ago, I served as a member of the board of directors of the Columbus Park Housing

Company, which was a non-profit mutual housing company within the West Side Urban Renewal Area.

Q Did you have occasion in the course of those activities to review each of the activities with respect to the development of programs and projects in the West Side Urban Renewal area?

A I had occasion to review the majority of them. I can't say that I reviewed each and every one of them.

Q Did you appear before the Board of Estimate and the City Planning Commission at public hearings in connection with these?

A Yes, sir.

Q Therefore, you participated actively through this span of years on the developments that occurred in this area?

A I would point out -- Yes, sir, and, in addition, let me point out in appearing at those hearings one not only speaks; one listens.

Q And you heard the different viewpoints?

A Yes, sir.

Q So that you have kept yourself informed throughout this period of years of the situation as it existed in various points in time between the late fifties and the present time?

A Yes, sir.

2 Q Are you ~~familiar~~ with the terms "urban blight"
3 and "urban decay"?
4 A Yes, sir; I am.
5 Q Would you define those terms for us as you under-
6 stand them?
7 A Urban blight refers generally to a condition afflict-
8 ing a once productive, useful area of the city which, for one
9 reason or another, has no longer -- has lost its ability or
10 capability of productive use by the citizens of that city.
11 Q Would you say that the elements of urban blight
12 and urban decay are relevant ot a consideration of the
13 situation that existed with respect to the development of
14 the West Side Urban Renewal project?
15 A I would.
16 Q And would you say that they were elements which were
17 required to be considered in connection with all actions
18 taken in connection with the West Side Urban Renewal project?
19 A I would.
20 Q And in connection with the evaluation of the
21 environmental aspects of the West Side Urban Renewal project,
22 would you consider that social, cultural and esthetic factors
23 and dimensions were appropriate to be considered?
24 MR. LAND: Objection to the form of the question,
25 your Honor.

THE COURT: Sustained.

Q Are you familiar with the social, cultural and esthetic dimensions of the environment with respect to the West Side Urban Renewal Area?

MR. LAND: Objection as being over-broad, your Honor.

THE COURT: No; I will allow it. Objection overruled.

MR. MORRIS: Your Honor, may I state --

THE COURT: No. The Judge is with you on that question. When you say, "May I state", you create problems. Grab hold of your gains and run with them. That is the trouble. If you start to argue when we are well off --

What is your answer? Yes or no?

A I am.

Q Would you say that they were relevant consideration in connection with the West Side Urban Renewal Area?

A I would.

MR. LAND: Objection. He hasn't stated what they are.

THE COURT: Objection sustained. Strike the answer.

Q What are they: social, cultural and esthetic dimensions of the environment as they relate to the West Side

Urban Renewal Area?

A Let me start with the cultural considerations of the West Side Urban Renewal Area. The West Side Urban Renewal Area is remarkably situated with respect to a large number of very important New York cultural institutions. It is near the American Museum of Natural History, near the New York Historical Society, near the large university complex on Morningside Heights. It is near Lincoln Center, and it offers tremendous cultural advantages and opportunities to the people who live there.

In designing an urban renewal plan for the West Side, one would want to design a plan which would enhance the stability, the influence of those cultural institutions. One would not want a plan which would place adverse or unfavorable land uses in that general area. One would want to have among the people living in the West Side Urban Renewal Area people who would respond favorably to the influences of those cultural institutions, who would become part of their clientele, because it makes sense with having the institutions there to have people who would take advantage of it.

At the same time, the West Side Urban Renewal Area has a tradition of intermixture or close proximity of different socio-economic classes.

I testified on my original examination that the elevated railroad had created a remarkable proximity, remarkable in the sense of unique, of low income and middle income families in the West Side area. Their mutual cultural interaction would be a primary concern for anyone dealing with the many human problems of how this area was to be redeveloped.

As to the esthetic considerations of the West Side Urban Renewal Area, we have the unique configuration of the low-rise, single-family row houses that were built on the side streets in conjunction with the tall apartment houses of Central Park West. The contrast between these two types of buildings is a very favorable contrast. Many of these brownstone buildings are handsome architecturally. Saving those buildings through a process of rehabilitation would seem to me to be a prime consideration in the development of a plan for that area, and although a few of these have been redeveloped as public housing, the mainspring for development or renewing the one-family houses on the side streets and maintaining that cultural pattern would require private ownership as part of the esthetic consideration.

Finally, the esthetic problems of the Columbus Avenue spine of the area were very serious indeed. The elevated railroad had an immense blighting effect on that

area. The buildings built along Columbus Avenue were buildings poorly designed, designed by small investing builders for the housing of low income people in typical tenement house fashion. Any esthetic redevelopment of the area would require a serious esthetic redevelopment of the Columbus Avenue frontage. This became an important esthetic criterion.

Finally, in reverse order, we have the social criteria. One of the most important social criteria here, it seems to me, would be to develop a peaceful and fruitful interaction between the white and the non-white population, so that the West Side Urban Renewal Area would stand as an example to other cities, let alone other parts of the City of New York, in which white and non-white people of varying -- varying among themselves in socio-economic positions would be able to interact with each other constructively with respect to their community services, their schools, their use of public facilities, their policing.

In short, these three criteria were vital to the really wisest use of this very well favored bit of ground.

Q You referred in your testimony on cross-examination to two Section 236 projects where welfare families were introduced into the projects. Were you referring to Columbus Manor and Westwood House? You said you could not recall their

names.

A That is correct.

Q Does that refresh your recollection?

A That refreshes my recollection.

MR. MORRIS: That is all.

THE COURT: Anything further, gentlemen?

MR. DOUW: Could we have a moment to confer?

THE COURT: Of course. Suppose we take a few moments' recess to allow you to make up your mind. I do think we should pursue it to its conclusion so the witness can leave and feel he doesn't have to come back again.

(Recess.)

THE COURT: How do we stand?

MR. LAND: Ready to go.

RECROSS-EXAMINATION

BY MR. LAND:

Q Mr. Starr, on the same day that the statement by the New York City Housing and Urban Development Board was received, that being Plaintiff's Exhibit 1, I believe -- Yes: Plaintiff's Exhibit 1 -- at that meeting -- You attended that meeting; right?

A The meeting of the Board of Estimate?

Q Yes.

A Yes.

Q And Exhibit Number 1, which was marked in evidence, was received at that meeting. Also at that meeting was the statement of the then deputy Commissioner of Relocation, Mr. Herman Badillo received at the meeting?

A I don't remember.

Q Do you remember whether Mr. Badillo attended that meeting?

A I would be conjecturing. I don't remember.

Q Do you know whether or not the then Commissioner Badillo made any statements with respect to the West Side Urban Renewal Area in his capacity as deputy Commissioner?

A Now, not without refreshment of my memory.

Q I show you Government's Exhibit D for identification and ask if that refreshes your recollection.

THE COURT: Can you show him about where it is, because he will spend a lot of time --

MR. LAND: This is the entire report.

Q (Continuing) I just ask you if you ever saw this report before.

A This is dated June 22, 1962. I don't remember the date of the other documents that we looked at, so I don't know whether this took place the same day or not.

THE COURT: You mean Number 1?

THE WITNESS: Yes, sir.

THE COURT: What is the date of Number 1?

MR. MORRIS: May 1, 1962.

THE WITNESS: This is June 22nd.

THE COURT: What is your answer? Do you remember Mr. Badillo at around the date that that document bears, Government's Exhibit D for identification, making a statement addressed to the same subject matter?

THE WITNESS: I remember Mr. Badillo making a statement. This statement took place on June 22, 1962.

THE COURT: All right. That is what he asks about.

MR. LAND: Just one moment.

We have an agreement that this may be placed in evidence --

THE COURT: By "this" you mean D?

MR. LAND: Government's Exhibit D for identification may be placed in evidence.

(Government's Exhibit D for identification was received in evidence.)

Q Mr. Starr, Exhibit D has been marked in evidence, and it is a statement by the then deputy Commissioner for Relocation, Herman Badillo, the statement of June 22, 1962, at a public hearing held by the Board of Estimate of the City of New York. In that statement, I would like to read from page 7, the first and second full paragraphs, and ask you

whether you have ever heard this statement before:

"In addition to the 2,500 low rent apartments, about one thousand more apartments will be provided in low rent housing by building additions to existing projects, rehabilitating brownstones and as a result of turnover in existing low rent public housing in the vicinity.

"In summary, new public housing within the site and adjacent to the site, turnover in public housing, rehabilitation of brownstones and twenty per cent of the apartments in middle income projects will provide about 3,500 units of low rent housing at rents under $20 per month per room."

Do you recall hearing or reading that statement by the then deputy Commissioner Badillo?

A Certainly.

Q And that statement reflects that there will be 3,500 units of low rent housing?

A In the vicinity. It does not reflect --

THE COURT: Wait a minute. Don't get away from the question.

What is the question?

Q This statement reflects that there will be 3,500 units of low income housing; right?

dhbr 13

Starr-

THE COURT: The statement so reflects? Yes or no? Does it?

A Yes.

THE COURT: Now you reconcile your testimony with regard to 2,500 or in the neighborhood thereof with the statement just read. How do you reconcile it?

THE WITNESS: I reconcile it because Mr. Badillo says that he is talking about the vicinity, and the vicinity is a very loose word, including most of the West Side.

THE COURT: Next question?

Q The other exhibits that have been marked in evidence for the plaintiff, being Exhibits 1, 2, 3 and 4, which you referred to, were they the major written documents that you relied upon in your belief that there was a limitation of approximately 2900 units of low income housing for the Upper West Side Urban Renewal area?

A They were the major documents.

Q In the event those documents show -- this is an assumption -- in the event those documents show that the approximate 2500 figure was a minimum figure rather than a maximum figure, would those documents, and your understanding of those documents, cause you to change your testimony as to your belief that there would be no more than about 2500 units of low income housing?

A If you -- may I understand your question? If you convince me that the 2500 was a minimum rather than a maximum figure, would I change my statement?

Q Yes, if those documents contained statements that the figure 2500 is in relaity a minimum figure, not a maximum figure, would that change your testimony as to the source, as to your belief as to what occurred?

A If you could overcome the difficulties of so convincing me, I would change my mind.

Q I show you a copy of Plaintiffs' Exhibit No. 2

and refer you to the second page of that, which contains the total of 2,559 units of low income housing, and it is a tabular, a list of numbers, that list of numbers contains a statement of what it reflects. Could you tell the Court what that statement reflects? What is the heading?

A "Minimum for Low Income, 2,559."

Q All right.

Do you know readily whether there are any statements in any of the exhibits introduced here which suggests that the number of low income units of approximately 2500 is other than a minimum figure?

A Oh, yes, indeed I do, sir.

First you have to understand --

Q No, in the statements, I said. In these written records which have been produced here, is there anything in there that you knowof?

A Well --

Q You can't point to it specifically. It will speak for itself. But if you can point ot it specifically, you can show me.

A I haven't read it through.

Q All right.

THE COURT: Anything else?

MR. LAND: There's no further questions, your

Honor.

THE COURT: Very well. That goes for everybody, I take it?

MR. MORRIS: No, sir, your Honor. I have a response on this particular item.

THE COURT: How much more do you have?

MR. MORRIS: Just two questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Starr, in connection with the statement that the 2500 apartments is a minimum or a maximum, I read you Jayson Nathan's statement, which is in evidence as Plaintiffs' Exhibit 4, dated October 25, 1967, which reads as follows:

"The most important result is that housing for low income families will be in ample supply. There will be enough not only to meet the needs of the residents of the neighborhood who must be relocated, but to fulfil a total commitment of 2500 apartments to which the city is pledged."

Doesn't that say that 2500 is adequate and not a minimum?

MR. LAND: It speaks for itself, your Honor.

THE COURT: Yes, objection sustained. That's argument to the Court. You can call that to my attention,

as you have. Next.

Q What do you know about 2500 being a minimum? You were about to state before why you understand the 2500 figure and what its significance was.

A Quite frankly, sir, when the officials of the City of New York addressed the people who were interested in low income housing, they stressed that the 2500 --

MR. LAND: Objection, it is hearsay. We have documents in evidence now introduced which deals with the 2500 figure, which would speak for itself. There is further written evidence that should be introduced, or if there are other people who have testified as to this figure, they should be called to testify. Otherwise, this is hearsay at this point.

THE COURT: Yes, it is. What do you say, Mr. Morris?

MR. MORRIS: I say he is an expert witness and is reporting what was understood to be the situation in the area during the 15 odd years of the processing of this project, and he is testifying to that, not to any hearsay, or to anything he has heard from anybody else. It is what his knowledge is as an expert of the area.

THE COURT: I will take that as to his understanding rather than as to proof of the source.

MR. MORRIS: Yes.

THE COURT: And give it such weight as the fact finder wishes to accord it. To that extent I will allow it but not beyond that.

What do you predicate that on?

A I predicate my answer to your question on conversations seriatim with James Felt, Clarence Davies, Milton Mollen and Jayson Nathan, in which they made perfectly clear that in establishing this 2500 they were compromising between the wishes of those who wanted low rent housing and those who felt that additional low rent housing above the original amount would endanger the project.

And this figure of 2500 was intended to serve as both a minimum and a maximum and I so understood it.

Q With respect to public housing in the vicinity --

THE COURT: Were these disclosures made to you by these gentlemen in their official capacity at the time? For instance, I know that that was a subject within the province of Mr. Felt. What about the others?

A They were all -- except that Mr. Felt was the Chairman of the Planning Commission --

THE COURT: Right.

THE WITNESS: -- the others were Chairmen of the

Housing and Redevelopment Board charged with the execution --

THE COURT: But it was in the course of their work in their governmental posts that they conveyed this notion that you have just pledge?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Speaking of the vicinity of the West Side Urban Renewal area, aren't there a large number of public housing units outside the Urban Renewal area and immediately adjacent to it?

A Yes, sir.

Q I refer specifically to Douglas Houses. Doesn't that have about 2,000 units?

A Yes, sir.

Q Aren't there other public housing projects within the immediate vicinity?

A There's one adjacent to Douglas Houses, a very large one.

Q Yes. So that a reference to a thousand units above the 2500 in the vicinity could easily be covered by Douglas Houses alone; isn't that so?

A Mr. Badillo himself refers to turnover in existing projects and I can only guess that he means projects like the Douglas Houses.

MR. MORRIS: That is all.

THE COURT: All right.

Mr. Starr, you are excused as a witness, unless you receive a subpoena or some other --

MR. LAND: Your Honor, the business about the oral statements he received from government officials, I would like to inquire into that, if I could.

THE COURT: Of course you may. I didn't intend to cut you off. I didn't know whether you intended to ask anything further. By all means.

REDIRECT EXAMINATION

BY MR. LAND:

Q These oral statements that you referred to about a minute ago, do you know whether any of these oral statements have been reduced to writing?

A I wouldn't know one way or the other.

Q When were these statements made to you?

A During the period from 195 -- let me be clear. Statements about the number of low rent housing units to be included in the ares and discussions of the number began in my case in the autumn of 1958 and continued right up until the time of the hearing which is evidenced in Exhibit No. 1.

Q That's 1962?

A Yes, sir.

Q The 4-year period?

A No, I am sorry. Yes, that's when they were first established, but discussions continued right up through the period that Mr. Jayson Nathan made the other statement that we have recorded.

Q In other words, in 1958 to 1967?

A '67.

Q You don't know whether any of the statements, these oral statements made to you by these various city persons, were ever reduced to writing?

A Well, I have no -- none were given to me, that I am familiar with.

Q Where were these statements made?

A They were made in the offices of the Housing and Development Board at 2 Lafayette Street, they were made in the offices of the City Planning Commission, they were made by Mr. Jack Felt to me in his home, they were made to the members of the Park --

Q When Mr. Felt was in your home making these statements, was he acting as a friend of yours or as an officer of the city?

A We were discussing very seriously the West Side Urban Renewal Project.

Q Was that a social occasion or an official occasion in your home?

A The particular occasion was a social evening, but when Mr. Felt and I discussed matters of this sort, it was official business.

Q Are you sure you accurately recall the oral statements made to you? Let me ask you this, when Mr. Felt was in your home, were you drinking liquor that night?

A I presume I was. Mr. Felt also drank liquor, too.

Q How much did you have to drink that night?

A I wouldn't remember how much I had to drink.

THE COURT: You are not going to get serious with that, are you?

MR. LAND: There's a serious --

THE COURT: Look here, please listen. The witness has testified to conversations he had with Mr. Felt and with others in the course of their work dealing with this entire subject. I have been around long enough toknow that depending on the quality of the person involved and his devotion to the cause that he represents you don't have to every time have a reporter present when men sit down to exchange views. It all depends on who is doing the talking and who is doing the witnessing.

Every time I go into a friend's home and

he wants to know about the outcome of a case, am I to say I shouldn't talk to you about it? We are interested in justice and so we talk aboutit. Thank God I have never had the slightest intimation that people thought that when I discussed it I discussed it other than as one who was devoted to the cause of justice, to whatever my capabilities permit. They never felt that it was improper and I don't think it is improper. We are always concerned.

I don't think that this business of asking how much liquor was consumed has anything at all to do with it except when you have got a witness that you think is so corrupt and so devoid of belief that you want to make him out as a first-class bum.

MR. LAND: No, no.

THE COURT: Then don't do it, because I want you to remember that this casts reflections on the moral values of the person.

MR. LAND: I certainly didn't mean that.

THE COURT: I don't have to adopt his views. He is up here as a witness, as a sworn witness. If I am convinced he is telling the truth, it will have meaning to me, and if I agree with his arguments I may adopt them. On the other hand, I may not.

Now, I don't like to get into the kind of area

that reflects on the morality of the person. If you want to attack him on that, I will bring him back tomorrow and I will let you go after him hammer and tongs but not that way.

MR. LAND: To the contrary, your Honor, may I make my offer of proof on this point?

THE COURT Go ahead.

MR. LAND: Only to suggest that an oral conversation held at a home on a social occasion between 1958 and 1967, a minimum of at least five years ago, and being social in only the context that people were having cocktails, I'm not saying that there is anything immoral about it, but five years ago when there might be an inference that one's ability to remember accurately that which happens at a social occasion --

THE COURT: Mr. Land, that wasn't the only time. He said that Felt told it to him on other occasions. You asked him where, so he happened to mention a social position. But you have a right to go into it in detail. All I want is cut out this business of intimating that they were cockeyed drunk and didn't know what they were doing at all.

MR.LAND : I want to correct the record on that. There is no intimation on that whatsoever and I apologize to the witness if I even meant to imply that. That certainly

wasn't my intent, your Honor.

THE COURT: It sounded like that and I didn't like it.

MR. LAND: It was not my objective.

Q Were there any oral statements made to you by the gentleman you referred to in respect to the 2500 units of low income housing after 1967?

A No; no.

MR. LAND: I have no further questions, your Honor.

Again I apologize to the Court for anything which appeared improper.

THE COURT: Mr. Witness, I am going to ask you to make a search -- this is a direction of the Court -- with regard to the very subject that Mr. Land has seen fit, and properly so, to pick you up on. You may have some correspondence with Commissioner Felt or with these other gentlemen who were just as wrapped up, so far as I am concerned, in the fair dealing and the honor of doing the right thing by people of all classes, and no one stood for that more than Mr. Felt. I have been in public life for 40 years, I have exposed chiselers, I have removed Judges, I have helped disbar lawyers in my time. I stood by Seabury in the investigation of corruption on the city. I don't need

any lessons fro[illegible] body as to the chiselers and the two-bit operators, and the men who have cleanliness in their souls and who really want to do the right thing. I happen to know that Mr. Felt was that kind of a man.

Now, would you be good enough, at my direction, to see if your files or any other source reflects any kind of information in letter form or memorandum that supports what you have given as your best memory with regard to the position of these men on the item in question. Will you do that?

THE WITNESS: I certainly will, sir.

THE COURT: Will you go about it promptly? The Court has directed you to do it. You have no alternative whether you like it or not, and I want you to report that to your counsel, who will in turn place it on the record that you informed him that you found nothing, or that you informed him that you found such and such. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Very well.

Is there anything else of this witness?

MR. LAND: Nothing at all, your Honor.

(Witness excused.)

THE COURT: Gentlemen, I told you tomorrow

morning I have a sentence at 10 o'clock. And those are always painful experiences. So there's no sense in bothering you until I am through with it, and I don't think I will be through with it until 10:30. There's no reason why you should come traipseing in here and have to sit around. But you are welcome, of course, any time you want to come. But we do get underway promptly at 10 o'clock tomorrow morning. Make an announcement to that effect.

(Adjourned to Wednesday, October 10, 1973, at 10:30 a.m.)

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